No. 1724

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IN THE

United States Court of Appeals

For the Fourth Circuit

No. 7286

EVELYN ECKERT, as Administratrix of the Estate of Edward James Eckert, Jr., Deceased, et al.,

Appellants,

v.

THE TEXAS COMPANY,

Appellee.

APPENDIX ON BEHALF OF APPELLANTS, ALLRED, BODE, BRIGHT, ECKERT, FULWILER

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Witnesses in Order of Appearance

WITNESSES FOR THE GOVERNMENT

1. ROBERT STONE SMITH—R. 28

On staff of Commander, Amphibious Force, U. S. Atlantic Fleet; testified about the wide dissemination to newspapers and other news media of the projected assault landing known as Operation Seascape.

2. EMERSON HAYES, JR.—R. 36

On staff of U. S. Coast Guard Headquarters, Merchant Vessel Personnel Division; testified about Sea Manners and Coast Guard publication stating it is negligence for a single ship to pass through a fleet formation regardless of relative position and right of way (R. 38, 39); describes the difference in lights of a fishing vessel and a destroyer (R. 39, 40).

3. ARTHUR JAMES GREEN—R. 44

Staff, U. S. Navy, Hydrographic Office, Nautical Information, Maritime Safety Division; testimony concerning warnings in information bulletins, British Regulations and Joint Chief of Staff Regulations all similar to Coast Guard Sea Manners.

4. WILLIS G. PARTRIDGE—R. 55

Assistant Chief to the Aids to Navigation Section, Fifth Coast Guard District; testified about the Notice to Mariners concerning the amphibious operation and the request to vessels not to interfere (R. 56) and that notice was sent to Texas Company (R. 61).

5. MARVIN O. RICE—R. 63

Navy Hydrographic Office, Chief of Nautical Information Branch, Division of Maritime Safety; testified con-

cerning regular hydrographic broadcasts to all merchant vessels.

6. Bruce Wayne Pritchard—R. 69

Was on U.S.S. "Fremont", in the Combat Information Center; testimony describes radar equipment.

7. Eugene I. Ricker—R. 85

In U.S.S. Fremont Combat Information Center, radiotelephone operator for intercommunication.

8. Lt. Moorehead—R. 97

Deposition submitted concerning activity in the radar room of U.S.S. Fremont.

9. Mr. Poulin—R. 97

Deposition submitted concerning activity in radar room of U.S.S. Fremont.

10. Edward J. Cottrell—R. 99

Employed in Department of Defense; testified concerning press releases about Operation Seascape.

11. Paul Wells—R. 102

Radar man aboard U.S.S. Ruchamkin. Testified that at time of collision was in radar room.

12. Robert E. Gorenc—R. 129

Radar man aboard Ruchamkin.

13. I. L. McNally—R. 168

Expert on radar.

14. James K. Watson—R. 178

Testimony to correct an error in voice radio log.

15. James Smith—R. 181

Deposition submitted. Was helmsman aboard the S.S. Washington at time of collision; he recognized naval formation, *since they were heavy ships in formation and signalling.*

16. Capt. Day—R. 182

Commander of Operation Seascape naval group; testified that green sidelight of Washington was visible through binoculars when 7 to 9 miles away; that Washington was in a crossing situation; that when Washington passed into the screen he slowed the formation.

17. Adm. Henry Stanford Persons—R. 272

Screen commander aboard Hollis.

18. Charles Ryan—R. 341

Signal man aboard U.S.S. Ruchamkin; testified he had no trouble picking out individual ships.

19. Edward W. Walthal—R. 380

Officer of the deck of the O'Hare; deposition submitted.

20. Alexander J. Hoffmeister—R. 380

Officer of the deck of the Capricornus; deposition submitted, testified that the Washington passed 2000-2500 yards ahead of his bow and collision occurred 3000 yards off his starboard quarter.

21. McLaughlin—R. 380

Officer of the deck of the Newport News; deposition submitted.

22. Hanlon—R. 380

Officer of the deck of the Glynn; deposition submitted. Washington passed within 1200-1500 yards of the Glynn's bow.

23. Joyce—R. 380

Officer of the deck of the Lloyd; deposition submitted, testified he slowed down to avoid collision with Washington and thus permitted Washington to cross about one half mile ahead of him.

24. Catlin—R. 380

Officer of the deck of the Hollis; deposition submitted.

25. Charles W. Morris—R. 381

Messenger of the watch aboard U.S.S. Ruchamkin; deposition submitted.

26. Robert G. Fetterman—R. 381

After lookout of the watch U.S.S. Ruchamkin; deposition submitted.

27. John W. Jenkins Jr.—R. 381

Helmsman aboard U.S.S. Ruchamkin; deposition submitted.

28. Horgan—R. 381

Officer of the deck of the Ruchamkin; deposition submitted.

29. Hirshman—R. 381

Deposition submitted.

30. Dr. Cooper—R. 381

Custodian of records of institution where James Upton treated; deposition submitted.

31. Doctor Muckle—R. 381

The doctor who examined James Upton for Public Health Service; deposition to be submitted at a later date.

32. Dr. Taitoco—R. 381

Examined Upton at Port Arthur, Texas; deposition to be submitted later.

33. Rual B. Caldwell—R. 382 and 590. Testimony reprinted in full herein.

Quartermaster aboard Washington; Coast Guard testimony submitted; testified was not on bridge at time of collision; testified concerning limited visibility from wheelhouse of Washington.

34. Capt. A. C. Jackson—R. 383

Commanding officer, U.S.S. Ruchamkin; testified that when sighted Washington closing he went to right.

35. Charles W. Ellert—R. 480

Starboard lookout on Ruchamkin.

36. Ernest Boghosian—R. 483

Lighting specialist; electrical engineer; testimony concerning signalling device

37. JOSEPH C. CWALINA—R. 487

In charge of U.S.S. Ruchamkin engine room; his log shows time of collision 0215.

38. THEODORE MILAN SABUY—R. 489

Communications officer on staff of Commander of Transport Control Squadron 2 on the U.S.S. Hollis; testified was on watch in Combat Information Center.

39. LEDALE A. THEISEN—R. 511

Quartermaster on U.S.S. Ruchamkin; testified time of collision as 0215.

40. C. E. MCELROY—R. 514

Port lookout, U.S.S. Ruchamkin; Coast Guard testimony submitted; testified was not on duty for 1 hour prior to collision; took over duty immediately prior to collision.

41. GEORGE G. JARVOE—R. 515

Junior Watch Officer, U.S.S. Ruchamkin.

42. GEORGE H. WHITING—R. 530

Chief Staff Officer, Operations and Plans Office; testified saw lights of the Washington when she was 6 to 7 miles away.

43. CMDR. W[illegible]ITEHEAD—R. 585

Newport News Combat Information Center officer; deposition submitted.

44. CHARLES F. NELSON—R. 586

Staff Watch Officer; deposition submitted by Texas Company.

45. JAMES UPTON—R. 588. Testimony reprinted in full herein.

Coast Guard testimony submitted; lookout aboard Washington at time of collision; testified he saw lights of ship with which Washington collided 10 minutes prior to collision and rang bell notifying bridge that vessel was sighted.

WITNESSES FOR TEXAS COMPANY

1. WILLIAM R. BAGGER—R. 597

Consulting marine surveyor and appraiser; expert who examined Washington after collision.

2. OSCAR SMITH—R. 605

Former naval officer; testified concerning authority of a commander of formation and naval formations in general.

3. CHARLES M. LYNCH—R. 650

Port captain for Sinclair Oil Company; deposition submitted.

4. MILTON BRECE—R. 651

Port captain, Sinclair Oil Company; deposition submitted.

5. EDWARD M. ANDERSON—R. 652

Made wooden scale models of ships; deposition submitted.

Witnesses in Order of Appearance

6. William Rockwell Griswold—R. 653

Deposition submitted; employee of Sperry Gyroscope; testified that the Washington recorder broke down at 6:19 A.M. November 13th, approximately twenty hours prior to collision.

7. Peter Savitsky—R. 654

Deposition submitted; was aboard a Sun Oil vessel not in the vicinity of the collision but nearby; testified he did not receive a Notice to Mariners concerning Operation Seascape.

8. George S. Hough—R. 655

Deposition submitted.

9. John D. Cain—R. 656

Master of S.S. Washington; testified was asleep at time of collision and was awakened by whistles.

10. Leonel J. Foithier—R. 722

Washington radio operator; testified didn't receive information concerning Seascape; had no orders to listen to hydrographic or Notice to Mariners broadcasts.

11. E. Bradford Tazewell, Jr.—R. 733, 775

Man not a marine architect who prepared exhibits introduced at trial which showed only white lights of naval formation, omitting silhouettes of ships and not showing when side lights would first appear; testified omissions due to lack of space on exhibit; testified exhibit omitted U.S.S. Ruchamkin.

Witnesses in Order of Appearance

12. Oliver Francis Riche—R. 750, 799. Testimony reprinted in full herein.

Second mate aboard Washington on watch at time of collision, and in sole charge of vessel's navigation.

13. Willard B. Gober—R. 857

Engineer of Washington; Coast Guard testimony submitted.

14. Anthony J. Lazarczyk—R. 857

Deposition submitted.

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Memorandum by the Court

IN THE

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

Civil 780, 953, 954, 1203,
1217-1222 inc. and 1230

—o—

THE U.S.S. RUCHAMKIN

and

THE S.S. WASHINGTON.

—o—

The U.S.S. Ruchamkin and the tanker Washington, of The Texas Oil Company, collided in the Atlantic about fifty miles off the coast of Virginia, just below Cape Henry, soon after two o'clock on the morning of November 14, 1952, with resulting loss of life and personal injuries as well as damages to both ships. Throughout the night the weather was fair, the sky clear, and the wind light, with a smooth sea. A fast destroyer escort, the Navy ship was joining from the rear a formation of ten other naval vessels moving westwardly in an amphibious operation aimed at the Virginia shore. The Washington, out of a Gulf port and bound for Philadelphia, was on a northerly heading and had passed through the screen of the formation as it slowed to let her through. Previously hidden from each other by an intervening heavy vessel of the main body, the Ruchamkin and the tanker met as the tanker crossed ahead of, and as the Ruchamkin on the off side and at top speed was overtaking, the intervening ship. The present litigation consists of reciprocal libels between the United States and The Texas Company

for the ship injuries, libels against the Company on the death claims, and the petition of the Texas for exoneration or limitation of liability.

On the preceding evening the flotilla had left Norfolk on a mock amphibious attack Operation Seascape—upon Camp Pendleton, located immediately south of Virginia Beach. The task force consisted of a screen of four vessels in a "bent line" or arc protecting a main body of five heavy ships formed in a circle with a radius of 1000 yards and the flagship in the center. The chord of the screen was a stretch of five or six miles. On this night only four ships were in the screen because the Ruchamkin; though a screen vessel, was away on a sortie to retrieve a shore detachment and to return with them to the formation at midnight.

U.S.S. Fremont was the flagship and guide. In addition to her captain, she carried the Officer in Tactical Command (OTC), in charge of the entire formation. On the extreme left of the screen was the U.S.S. Corry, the Lloyd next, then the Hollis carrying the screen commander as well as her own master, and the O'Hare farthest to the right, all destroyer-type craft. The wing tip ships—the Corry and O'Hare—were stationed 5900 yards from the guide and 75° to each side of her base course line, while the two inner screen vessels were distant 3700 yards from the guide and, respectively, 33° to the right and left of the base course. Around the flagship were the Glynn, directly forward; the Capricornus, nearly abeam to starboard; (the Carter Hall was to have been on the Fremont's starboard quarter but was detained for repairs and never participated in the maneuvers); the San Marcos astern of the flagship; the New Kent on the port quarter; and the Newport News broad on the Fremont's port bow.

The formation steamed almost due east from the Virginia capes. Outbound the Newport News on radar picked

up the Washington to the south, on a northerly course, inshore of the flotilla, and the Newport News almost constantly thereafter maintained a track on her. Originally the Navy unit planned to turn south when about sixty miles at sea, and when opposite "Point Yoke"—Camp Pendleton—to head west for the assault. Before reaching the end of the first leg, however, the OCT discovered that an aircraft carrier group was maneuvering south of him and he, therefore, abandoned his intended course change in that direction; instead, the flotilla switched to due north at 0055. About 0115, the flotilla swung from north to west, 270°T. At 0150 again the course was changed, this time to 257°T. The last alteration was necessary to bring the group into Camp Pendleton—to compensate for the abandoned southward movement. Their speed was 14 knots.

In the meanwhile the Washington, with all regulation lights burning, was on a course of 7½°T. (9° gyro) and a speed of 14½ knots, her presence well known to the flotilla. She had passed the aircraft carriers and now saw more white lights to starboard, both forward and abeam, and some on her port bow. None seemed nearer than five miles. Save for a temporary deviation to port to give ample way to an unidentified southbound ship, she steadily maintained her course and speed.

The combat intelligence center (CIC) of the Fremont had the Washington on her radarscope at a range of thirteen miles just before the flotilla changed from its 270°T. course at 0115. Other ships of the group also held the Washington. The flag did not consider her to be a threat to his formation, for he reckoned that the Washington would pass astern of the group. But when the formation changed to 257°T.—at 0150, twenty-some minutes before the accident—the Washington, then off the Fremont's port bow at a distance of ten miles, was

computed to be on a collision course with the Capricornus, collision predicted at 0209. This solution was thereafter verified at short intervals, and about three minutes later the Washington was bearing 229° T. with a range of 6.7 miles from the Fremont, and next at a range of 3.9 miles, bearing 230° T. About 0202 it appeared she would pass through the center of the formation, her closest point of approach being 1700 yards from the Fremont. This information was published generally throughout the flotilla at a time when the Ruchamkin was in the area. Because of sea return or other interference, after 0202 the Washington was no longer observable on the flagship's radarscope.

At 0205 the formation's speed was reduced from 14 to 8 knots, then to 5 knots at 0207. The Washington had not yet passed through the screen. The purpose of the speed reductions was to let her through. (The clocks of the flotilla were possibly two minutes ahead of the tanker's, but the times here are those of the Navy.) On the Washington, soon after 0200, the second mate having her con saw two red lights almost dead ahead or fine on the starboard bow, "bright" and "close of me and going across my bow". Immediately he ordered the tanker to 23° gyro (21½°T.) from her base course of 9° gyro (7½°T.). The two red lights were undoubtedly the port side lights of the Hollis and the O'Hare (the vessels of the right wing of the screen). When these two red lights were well on the tanker's port bow, she went back to 9° gyro or 7½°T. She had passed between the Hollis and the Lloyd, about a half-mile from the latter, more than a mile from the Hollis, and 1200-1500 yards ahead of the Glynn, the lead-ship of the main body.

Just after he had steadied on 7½°T. and was passing the Capricornus (the main body's starboardmost ship) the mate saw another red light "very close to my starboard

hand, and coming across from my starboard bow to my port bow at a terrific speed." Immediately he gave the tanker hard left rudder and sounded two blasts on her whistle, followed by several short ones. The red light was the Ruchamkin as she sped across the Washington's bow. Within seconds the vessels collided, the Washington's stem ramming the Ruchamkin a bit aft of midships. It was 0213 Washington time, possibly 0215 Ruchamkin's.

Earlier the Ruchamkin had completed her mission and had tailed the formation while it was still steaming eastwardly. About 0138 she reported to the screen commander by voice radio her readiness to join, and in reply was told to wait. At 0140 she reported her arrival to the guide and received acknowledgment at 0155, but her message did not reach the Fremont's bridge until after the collision. She was then on the starboard quarter of the main body, bearing 60°T. from the flagship and 6500 yards distant—she had followed around to the right of the group as it changed courses. No warning of the approach of the Washington was ever specially given to the Ruchamkin by the guide or by any other ship in the formation. Her commander testified that he had not received the reports which the Fremont had been releasing concerning the tanker. Moving with the same speed as the main body, while waiting, the Ruchamkin was next directed by the screen commander to move to a position from which, when ordered, she could assume her station in the screen—immediately to the north and right of the Hollis. The tanker was then preparing to go through the screen—on the other side of the Hollis—her course 7½°T.—then 21½°T.—then 7½°T., the Ruchamkin's 260°T.

For taking position the command to the Ruchamkin was to expedite, i.e., to hurry or move "smartly". With engines rung up to 22 knots, she coursed along the right side of the main body, almost parallel to the formation—a di-

vergence of only 3° and 1000 to 1500 yards from the nearest ship. In effect told to disregard the speed reductions, the Ruchamkin was ordered by the screen to "continue to expedite". She obeyed. Still no special warning was given her of the Washington's presence inside the screen, though she was in plain view of every vessel of the whole flotilla save the Ruchamkin. Indeed, before the Ruchamkin encountered the Washington the formation had been ordered to resume 14 knots, another assurance to the Ruchamkin that all was clear.

The intervening main body—"cargo lights, porthole lights and mast lights, or what you have from this formation"—obscured the Washington and the Ruchamkin from each other. Then on a 260° or 265°T. course and overtaking what she thought was the Carter Hall (not being advised of the latter's absence), but which in fact was the Capricornus, the Ruchamkin noticed that the next vessel, believed to be the Glynn, apparently was closing her. In truth it was the tanker, at a range of not more than 1000 yards. At once the Navy ship went to 270°T., then to 275°T. and then to full right rudder. Only a directional change of 28° was accomplished. She shot across the tanker's bow. Collision followed, within a minute or two from the moment the one observed the other.

Stressing that radar perception does not relax the rigor of the International Rules and insisting that the Washington was throughout the burdened vessel in a crossing situation, the United States lays blame to the tanker, in that, she did not give way to the flotilla as a unit or as separate ships. 33 USCA 104. Conceding the premises the tanker contends, however, and the court agrees, that neither before nor after the tanker entered the screen—the two pivotal stages of the case—did the Washington breach the right hand rule. Indeed, no transgression of any sort was committed by any vessel before the tanker

passed through the screen. The cause of the collision was the Navy's breach of the special circumstances mandates of the Rules while the Washington was in the midst of the flotilla. 33 USCA 112, 121.

I. Assuming, as the Government asserts, that the tanker had been apprised by public notices of the Navy's plans for Seascape, she was not thereby burdened more heavily than to anticipate the appearance of the Navy ships and to avoid unnecessary interference with them. But even if it was the Washington's duty to give way to the formation—if the starboard hand rule accorded precedence to the flotilla as a whole—she had no opportunity to defer. As she stood up the coast, the Washington had passed one naval group, and if she was to expect another, nothing in the later lights revealed the arrival of a second formation. Moreover, initially the flotilla planned to move south on its first turning, and thus the tanker might reasonably have believed she would escape the formation entirely.

The merchantman had before him only a mass of white lights. Well could they have marked a fishing fleet or a number of unassociated freighters. All hands agree that traffic was very thick that night. The lights were all within the customary lanes of coastwise shipping and in the routes of vessels bound for and out of Chesapeake Bay ports. For the last hour the ships of the screen had been repeatedly altering position, as they oriented and reoriented; the main body also, though less radically. These movements aggravated the confusion of the lights. Blinker as well as light signals from the naval vessels were not intelligible to the stranger and she is not blameworthy for having gleaned nothing from them. Consequently, even if it had been the duty of the tanker to go astern of a naval formation, she had no warning she had met one.

Besides, until 0150, only slightly more than twenty minutes before the collision, the Washington was not a

threat to the flotilla; as tracked she would pass astern of the group. At that late hour the guide established a collision course with the tanker by turning the flotilla to 257° T. from 270° T. To be sure, the flotilla was entitled to change course, but this alteration was just another factor rendering avoidance of the flotilla more difficult.

In this connection it must be remembered, too, that the tanker and the flotilla were meeting at less than a right angle. Also, because of the eastwardly receding curve of the southerly end of the screen arc, the tanker was not in a situation involving risk of collision with the flotilla until she was beyond the path of the southernmost ship of the screen, the Corry. Hence the tanker did not have the choice of skirting the flotilla. At all events, neither of the two left wing or southern vessels of the screen (the Corry and the Lloyd) ever tendered collision. When the tanker neared, but before she pierced the screen, both the Corry and the Lloyd, as we have seen, diminished their speed markedly. Their bearing thus did "appreciably change" and risk of collision disappeared. As the Washington's mate said, these ships slid down his starboard hand and dropped astern of him.

Therefore, the tanker in not at once yielding to the flotilla—in not going astern of the Corry or the Lloyd—did not violate the right hand rule. While the OTC's decreases of speed were purposed, commendably enough, to minimize the dangers incident to the meeting those dangers sprang principally from the Navy's desire to maintain a unified formation, a unity which demanded exclusive occupancy of almost twelve square miles of the sea at all times and which had embarrassed the Washington a limine. But having slowed his ships, the OTC intended for the tanker to continue as she did. On glimpsing the red side light of the Hollis to starboard, however, the

Washington immediately righted her wheel—going 7½° T. to 21½° T.—but returned to her original course as soon as the Hollis was away. The tanker did not attempt to pass eastwardly through the formation; the screen commander admitted that he was mistaken in so announcing to the flotilla.

Just as the tanker's behavior before she penetrated the screen was blameless, so for entering it she is not censurable. There was no other way for her. Had she stopped or slowed she would have been enveloped by the flotilla; had she gone astern of the Lloyd, she would have engaged the main body of the formation.

II. Furthermore, the Washington committed no fault of navigation after she moved into the field of the flotilla. When she resumed 7½° T. she was departing the formation, crossing the bow of the outermost heavy ship, the Capricornus, at a range estimated by the OTC as from 500-800 yards and by the watch of the Capricornus at 2000-2500 yards. Already she had cleared the Glynn, the van of the main body, by 1200-1500 yards. At this time the Capricornus was at five knots. (In an answer to interrogatories the Government stated that the Capricornus was a darkened ship from midnight until 0200; but the Government asserts this was an error, and the court so finds.) Obviously the flag considered the Washington safely away as she passed the Capricornus, for he thereupon ordered the whole flotilla to resume its regular 14-knot speed.

The meeting of the Ruchamkin and the Washington was not controlled by the starboard hand rule, for neither vessel could see the other. Lind v. United States, 1946, 2 cir., 156 F. 2d 231, 233. There is no acceptable proof that the tanker could visually have espied the Ruchamkin, or the Ruchamkin the tanker, before the other emerged from the obstruction of the Capricornus. Wholly incredible is the testimony of the tanker's lookout that he discerned

the lights of the Ruchamkin before and just after 0200, reporting them to the bridge each time, and could recognize them as the ship with which the tanker collided. The court cannot find, as does the Government, any corroboration of the lookout in the testimony of the tanker's wheelsman. There is virtual unanimity among all the watch officers that so numerous were the lights that no particular ship was distinguishable. Even the screen commander lost sight of the Washington as her lights merged with the main body's. Nor were they separable on the radarscope. With so many pips on the radarscope, the picture was like "a cluster of grapes" and individual identification almost impossible.

As the Ruchamkin was not in sight, the Washington was not required by Article 28, 33 USCA 113, to give Ruchamkin a whistle signal of the tanker's return to 7½° T. A blast then might incidentally have been helpful or it might have been confusing, but as it was not owed the Ruchamkin, its omission was not fault.

Governing here are the special circumstances rules, Articles 27 and 29, 33 USCA 112, 121. Both vessels exerted themselves to the utmost to avoid collision after their presence was mutually disclosed. From that moment no negligence can be laid to either. Although "right hard rudder" by the Ruchamkin might have saved her, it is doubtful; her master was acting in extremis and he must not be judged too nicely. But earlier neglect of the Navy directly and proximately accounts for the collision.

No explanation is offered why the Ruchamkin did not receive and regard the advice repeatedly given the flotilla both by the OTC and by the screen commander of the tanker's progress; no reason is given why the Ruchamkin was not alert to the danger she might well anticipate from the stranger. In these respects she was negligent. Again, with the tanker proceeding between the Lloyd and

the Hollis and the formation slowing to let her through, the screen commander nevertheless called the Ruchamkin to speed across the bows of the Washington, at the same time misjudging the course of the merchantman. For allowing the Ruchamkin to follow an order so plainly perilous, the OTC, too, was negligent. Though the expediting order established an obvious risk of collision, no effort was made to caution the tanker against the imminent danger. Utterly ineffectual as a signal were the flashing lights sent her from the Fremont. Delayed until the tanker was passing the Carpricornus and designed only to reprimand the Washington for traversing the area, they were focused not from a nearby ship but from the flagship, a vessel encircled by other ships. Light signals that night had not been effective between the members of the naval group themselves—not even the screen commander could be raised by the Ruchamkin by lights.

If a private vessel, the Ruchamkin because of her negligence would be liable in rem, and her owner would be liable in personam, for the damage to the tanker. Hence here the United States must answer on both principles. Public Vessels Act, 46 USCA 781. Ruchamkin is also liable under the in rem principle, and the Government in personam, for the negligence of the commodore and the screen commander. This liability is not fixed by virtue of a military chain of command; it is predicated upon what these officers did or left undone while present and in authority. Moreover, by reason of their authority to direct her moves, they were constructively aboard the Ruchamkin. As we later point out specifically, the Fremont and the Hollis are also liable under the in rem principle, and the United States in personam, for the negligence of the tactical officers respectively aboard them. No other ship in the flotilla is found guilty of tortious conduct.

The court has decided the issue of the in rem liability of the Fremont and Hollis because the Government re-

quested a finding on this head. Each of these two vessels had her own master and the United States urges with much force and logic that, as the mistakes of the tactical officers occurred in their actions as commodore and screen commander, and not in the navigation of the ships they were aboard, these vessels are not chargeable with such negligence. Strong precedent is cited to this point: Publicover v. Alcoa S.S. Co., 1948, 2 cir. 168 F. 2d 672, 678; the Glaucus and City of Florence, 1948, Law Reports (Eng.) Probate Division 95; The Sobieski, 1949, Law Reports (Eng.) Probate Division, C.A. 313. But in all of these cases the commodore's vessel was owned by another than the employer of that officer. Moreover, in each instance he was aboard or acting in that capacity without the invitation or desire of the owner.

On the other hand, instantly the tactical officer was on board at the direction of the owner; the vessel was furnished him by the owner for his tactical duties. There is nothing inequitable in holding the owner, and the ship it provided for him, responsible for the tactical officer's conduct. In United States v. The Australia Star, 1949, 2 cir. 172 F. 2d 472, 476, the Government's escort ship was held liable for failing to give both her escortee and a stranger-vessel warning of the approach of each other. True, there the escort's master and the escort officer were the same person; but, surely, the division of these responsibilities between two officers, instead of vesting them in one, does not destroy the principle. We find no repudiation of The Australia Star evinced in United States v. The Adrastus, 1951, 2 cir. 190 F. 2d 883.

Again, the argument of the Government would vitiate the intent of the Public Vessels Act. Its intendment is to render the United States suable and answerable for a want of care on the part of its authorized personnel in their acts upon its public vessels. Canadian Aviator,

Ltd. v. U. S., 1945, 324 U. S. 215, 224. In the present instance the commodore and the screen commander were certainly lawfully aboard and did, or failed to do, that which was within their authority. In these circumstances the Act considers their conduct to be their ships'. Indeed, they each had the power to control the movements of the very ships that carried them. Under the Public Vessels Act the liability of the United States is traced through the ship, and if the tactical officer's negligence is not to be ascribed to the ship, then any liability of the United States for the negligence of such officers, no matter how grave, would be put in doubt.

Finally, proctors for the Government complain of the court's refusal to direct production before trial by The Texas Company of the statements of four members of the Washington's crew, "especially when the Government's Board of Inquiry testimony had been required to be turned over to The Texas Company" and because this was a "ruling for attorney privilege and against naval privilege". They request the court "for the benefit of the record" to "note the Government's contention." It is so noted, but it is fundamentally in error. Only because the statements were the personal work product of counsel was pre-trial access to this memoranda not allowed; at the trial the Government was unrestricted in its cross-examination of these witnesses; and not the slightest prejudice to the United States was suggested at the hearing. But as to the Government's production before trial, the fact is that nothing was "required" of it. The Court ordered discovery in precisely the terms the Government itself had offered disclosure; no more was ordered than was tendered. Further, its proctors repeatedly disclaimed any privilege—specifically, on June 2, 1954, and again on September 13, 1955.

Adopting this memorandum as its findings of fact and conclusions of law, the court will on presentation enter a decree in each of the death suits and in the limitation proceeding exonerating the Washington and The Texas Company, and will pass a decree in The Texas Company libels fixing liability upon the United States in accordance with the views herein expressed.

(Sgd.) ALBERT V. BRYAN,
United States District Judge.

April 17th, 1956.

Final Decree

IN THE

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

ALEXANDRIA DIVISION

Civil Action No. 780

UNITED STATES OF AMERICA, owner of the U.S.S. RUCHAMKIN,

Libelant,

v.

S.S. WASHINGTON, her engines, etc., THE TEXAS COMPANY, etc.,

Respondent.

Civil Action No. 1203

In the Matter
of the
Petition of THE TEXAS COMPANY, as owner of the Tanker WASHINGTON for exoneration from or limitation of liability.

Civil Actions Nos. 1217, 1218, 1219, 1220, 1221, 1222 and 1230

EVELYN ECKERT, as Administratrix of the Estate of Edward James Eckert, Jr., Deceased; PARLEY BRIGHT, as Administrator of the Estate of Merton Bright, Deceased; CATHERINE BODE, as Administratrix of the Estate of Ralph J. Bode, Deceased; BARBARA ALLRED, as Administratrix of the Estate of Kenneth V. Allred, Deceased; MARGARET FULWILER, as Administratrix of the Estate of John T. Fulwiler, Deceased; JOSEPH KENNEY, as Administrator of the Estate of Raymond Kenney, Deceased; ROMOLO POMPA, as Administrator of the Estate of Pasquale Pompa, Deceased,

Libelants,

THE TEXAS COMPANY,

Respondent.

Final Decree

The above entitled causes, together with the libel of The Texas Company as owner of the tanker S.S. Washington, against the United States of America as owner of the U.S.S. Ruchamkin (In Admiralty Nos. 953 and 954) having come on to be heard by the court on the pleadings and proofs of the respective parties and claimants, and having been argued and submitted for decision, and due deliberation having been had thereon, and the court having decided that the collision was caused solely by the fault of the United States of America and its agents and employees in charge of the U.S.S. Ruchamkin, the U.S.S. Hollis and the U.S.S. Fremont, and that the said collision was not caused or contributed to by the negligence of The Texas Company, its officers and employees or those in charge of the S.S. Washington, and the court on April 17, 1956 having filed a memorandum setting forth its findings of fact and conclusions of law which memorandum is filed with the papers in the cause entitled, "The Texas Company, owner of the tanker Washington v. The United States of America, owner of the U.S.S. Ruchamkin," In Admiralty Nos. 953 and 954, it is now, on motion of Francis N. Crenshaw, one of the proctors for The Texas Company,

ORDERED, ADJUDGED and DECREED:

1. That the collision and the consequences thereof, described in the libels, cross-libels and petition herein, were caused solely by the fault of the United States of America and its agents and officers in charge of the U.S.S. Ruchamkin, the U.S.S. Hollis and the U.S.S. Fremont.

2. That the collision and the consequences thereof were not caused by any fault or negligence of The Texas Company, its officers or employees or those in charge of the S.S. Washington.

3. That The Texas Company, as owner of the S.S. Washington, is entitled to be and is hereby forever exonerated from any liability, damage or cost arising or resulting from said collision.

4. That the death cases entitled:

Evelyn Eckert, as Administratrix of the Estate of Edward James Eckert, Jr., Deceased. (Civil Action No. 1217)

Parley Bright, as Administrator of the Estate of Merton Bright, Deceased. (Civil Action No. 1218)

Catherine Bode, as Administratrix of the Estate of Ralph J. Bode, Deceased. (Civil Action 1219)

Barbara Allred, as Administratrix of the Estate of Kenneth V. Allred, Deceased. (Civil Action No. 1220)

Margaret Fulwiler, as Administratrix of the Estate of John T. Fulwiler, Deceased. (Civil Action No. 1221)

Joseph Kenney, as Administrator of the Estate of Raymond Kenney, Deceased. (Civil Action No. 1222)

Romola Pompa, as Administrator of the Estate of Pasquale Pompa, Deceased. (Civil Action No. 1230)

should be, and the same are hereby dismissed, and the respondent shall recover its costs as taxed therein. This order is without prejudice to the rights, if any, of the estate of Joseph Kenney under its alleged settlement agreement with The Texas Company.

5. That the libel of the United States of America as owner of the U.S.S. Ruchamkin v. the S.S. Washington, designated Civil Action No. 780, should be and the same is

hereby dismissed, and the claimant-respondent shall recover its costs as taxed therein.

(Sgd.) ALBERT V. BRYAN,
United States District Judge.

Dated at
this 11th day of May, 1956.

A True Copy, Teste:

WALKLEY E. JOHNSON,
Clerk.
By FRANCES E. MUMFORD,
Deputy Clerk.

We ask for this:

s/ BAIRD, WHITE & LANNING,
By FRANCIS N. CRINSHAW,
Proctors for The Texas Company.

No objection as to form:

s/ L. S. PARSONS,
By T. F. McGOVERN,
United States Attorney.

s/ WILLIAM P. WOOLLS, JR.,
Proctor for Death Claimants, Eckert, Bright, Bode, Allred, and Fulwiler.

s/ FREEDMAN, LANDY AND LORRY &
JOHN P. STRAUSS,
Proctors for Death Claimant,
Pasquale Pompa, dec.

[15] Mr. Brush: With the Court's permission, I would like to make this rather brief but I think preliminarily we ought to have some explanation because of the fact that the Navy testimony perhaps or the testimony involving the Navy witnesses frequently is expressed in sort of Navy language or [16] lingo. Sometimes they use letters or things of that character and they will describe a technical maneuver of naval vessels that were involved in this matter.

Now we have here a litigation involving eleven naval vessels and one merchant ship, a tanker. The tanker was what is known as a T2 tanker approximately five hundred twenty-three feet long. She was loaded, and she had left a Gulf port known as Atreco, Texas, several days previous, and was on a voyage to Philadelphia, Pennsylvania. That voyage would take her up along the coast. This collision happened about fifty-five miles off the coast of Virginia, in the vicinity of Cape Henry. It happened 2:15 or 2:13, according to some witnesses; 2:15 Navy time in the morning. The night was clear. There was little, if any, wind. The visibility was good. The Washington was proceeding up, having passed Hatteras earlier in the evening and she was proceeding on a course which some of the witnesses will describe as zero zero nine which is a little to the right of north.

The Navy formation consisted of eleven vessels. The operation plan under which this formation was practicing this maneuver—it was a fairly large-scale maneuver that had been planned several months in advance, and the Navy ships set out from Norfolk the night before, or the evening before, and the plan called for these ships to proceed to sea some fifty or sixty miles or more, and then turn and head back at a [17] particular time in a westerly direction towards the coast, so that the vessel would arrive at a particular point about 4:30 in the morning, at which point

other vessels, Navy vessels carrying troops would meet, and there would be an assault on the beach in the vicinity, a practice assault in the vicinity of Camp Pendleton, Virginia.

* * *

[39] EMERSON HAYES, JR., witness for the government, *direct examination by Mr. McGovern*:

Q. Captain Hayes, have you sailed out of the port of Norfolk and Hampton Roads? A. Yes, I have.

Q. Are you also as part of your regular duties in the Coast Guard familiar with the requirements of the rules of the road, particularly international rules? A. Yes, I am.

Q. Now I am directing your attention to the International Rules which were in effect in 1952, which were for the purpose of this case—we will call it Old International Rules. Now what lights would a fishing would a fishing vessel on the high seas off Cape Henry be showing, if she were fishing under the International Rules as they existed in November, 1952? A. Well, if it was the prevailing type of vessel, a [40] trawler, that would be there, she would show a tricolored lantern on her foremast which would consist of a white light in the center and a green light showing on the starboard side and a red light on the port side and six to twelve feet below that light, she would show an all around white light.

Q. Now what lights would be shown at the same time in the same place by vessels of a normal length as big as a destroyer which were under way and showing the required navigational lights? A. On her foremast she would show a foremast light, which would be a twenty point light showing from two points abaft or port beam all through the range of bearing to two points abaft the starboard beam. She would show on her starboard side a green light that would show from dead ahead from two points abaft the starboard beam and on her port side a red light which would show from dead ahead two points abaft of the port

beam. Then she would also show a stern light which would show six points forward of her stern. In other words, from the two points abaft of beam to dead astern, and cover the rest of area, would be a white light.

Q. Captain, have you navigated with radar? A. Yes, I have.

Q. For what company? A. For United States Lines.

Q. Have you also navigated with radar for the Coast [41] Guard? A. Yes, we have.

* * *

ROBERT E. GORENC, witness for the government, *cross-examination by Mr. Crenshaw*:

[160] Q. Do you think you would have known what was in it at [161] the time? A. Yes.

Q. Did you read the Captain's Night Order Book? A. Yes, I did.

Q. You would have been familiar with what was in that? A. Yes.

Q. As you were proceeding along, did you have a feeling that, or did you know whether you were behind schedule, the Ruchamkin was late in accordance with this delicately planned maneuver? A. I vaguely remember thinking so. I am not sure.

Q. You had that impression? A. Yes.

Mr. Crenshaw: If your Honor please, I wonder if we could take about a five-minute recess. This information was given to us just today and we are having a little difficulty assimilating it.

The Court: Yes. Take a short recess, Mr. Marshal.

(After recess.)

(The witness resumed the witness stand.)

By Mr. Crenshaw:

Q. Mr. Gorenc, during the recess I handed you a paper which has been previously introduced as the Ruchamkin

C.I.C. voice radio log. Now referring to that, would you look at [162] the entry at zero one thirty. Now that entry is from Com Screen to the Ruchamkin, and am I correct in saying that that is an entry directing you—no, reporting—strike that—that is from the Ruchamkin to Com Screen reporting for duty? A. Yes, that is correct.

Q. Now the answer to this message was, Roger Wait; is that correct? A. That is correct.

Q. That meant that action to that would be taken at some later time; is that correct? A. Yes, that's correct.

Q. Now then, we have a message at zero one four nine from the Commander of the Screen to the Ruchamkin. Is that a direction for the Ruchamkin to proceed to its position or what does that say? A. Shall I read it?

Q. Please do. A. Formation has decreased speed to fourteen, and are on Roger two five seven. Expedite formation. C.I.—I can't read the rest of it.

Q. But the word expedite is in there, is it not? A. Yes.

Q. Is that a direction to you to proceed rapidly to your position? [163] A. Yes.

Q. And that is at zero one forty-nine? A. That's correct.

Q. Now then at zero two zero one, one minute after two, there is a message from Com Screen to all screening vessels, execute to follow eight. What does that mean? A. Speed eight knots.

Q. And the execute to follow means? A. That we're going to come to a speed of eight knots at a given time.

Q. Sort of an informational broadcast? A. That's correct.

Q. And then one minute later, which is two entries later, at zero two zero two there is a message from the Screen Commander to the Ruchamkin saying, formation has executed speed eight knots to expedite joining formation. Is that correct? A. Yes, that's correct.

Q. And then one minute later at zero two zero three, we find a message from the O.T.C. to the Commander of the Screen, execute speed eight. A. That's correct.

Q. So that your first expedite came on the zero one four nine, and your second expedite came at zero two zero two? A. Yes, sir.

* * *

[180] Thereupon, CHARLES N. DAY was called as a witness by counsel on behalf of the Government and, having been first duly sworn, was examined and testified as follows:

[181] *Direct examination*:

Mr. McGovern: Your Honor, in order to put on Captain Day, who has read the deposition of the witness, Smith, I should first have to introduce the deposition of the witness, James Smith.

The Clerk: James L. Smith.

Mr. McGovern: James L. Smith.

I understand we are pressed for time and that we don't have to read the deposition into the evidence.

The Court: I do not want you to feel pressed for time. Take such time as you think is necessary. If you do not want to read the depositions, I will read them.

Mr. McGovern: That is what I wanted to know.

The Smith deposition is the one I thought was important. The witness has read it.

(The depositions were filed in open court.)

By Mr. McGovern:

Q. Captain, what is your name and your home address? A. Captain Charles N. Day, U. S. Navy, U. S. Naval Station, Green Cove Springs, Florida.

Q. Now when were you graduated from the Naval Academy? A. 1926, sir.

[182] Q. Were you in command of a naval group, or other organizations which were engaged in Operation Seascape? A. Yes, sir.

Q. Please explain what your command was and how your command was designated and the limitations on your command. A. I was in command of the Task Force operating under Operation Seascape, and on the night in question I was Commanding Officer of the movement element which consisted of a main body of six ships, and a screen of four ships. We were proceeding from Little Creek, where we had held an operations, rehearsal operations in the afternoon to see the afloat phase of this Seascape Operation, and this was the phase preceding the landing assault to be held the next morning.

Q. Now where were you and your staff physically located? A. On the tactical bridge of the Fremont, which is the highest bridge on the Fremont.

Q. What kind of a ship was the Fremont? A. She was an A.P.A., fitted up as a secondary command ship.

Q. Now what was the relations between you as the flag and the Fremont as the ship? A. The ship operated as a unit under my command as all other ships, except that I had the complete tactical [183] control circuit on the tactical bridge.

Q. Did the Fremont continue to have her own commanding officer? A. Yes.

Q. Was he still in command of the ship? A. Yes, sir.

Q. Was he still responsible for the safety of his own ship? A. Yes, sir.

Q. Now how was the C.I.C. of the Fremont? Was that attached to the flag or attached to the ship? A. It was attached to the flag, sir.

Q. Now where were you yourself standing at the time that you first became aware of the ship which later de-

veloped to be the tanker Washington? A. I was on the bridge when my staff officer, Lieutenant Nelson, called my attention to a light that he could just barely make out, and I went over and couldn't see it at first, and then finally picked it up with my eight fifty binoculars, eight power binoculars. We at first couldn't make out what it, what the color of the light was. We finally determined it was green. I then proceeded to give orders to C.I.C. to start tracking this target.

Q. About how far did this green light appear to be when you picked her out with the binoculars? [184] A. From previous experience with an eight power binoculars I judged it to be seven to nine miles.

Q. Now at the time she was sighted, where did she bear from the Fremont? A. I am not sure of the exact bearing right now, but it was, I believe it was on the port bow, a little bit ahead of the beam.

Q. Now was she on the same bearing with respect to the other vessels under your command? A. Some of them may have been in line with the San Marcos. I believe it was over on the port side while we were on two five seven.

Q. Now did you continue to observe the vessel which later turned out to be the tanker Washington? A. Yes, sir; I observed the vessel visually most of the time during her track ahead of the two left ships of the screen, through the screen until she had cleared ahead of the Capricornus. She was visible nearly all that time, and became more visible as she approached into the formation.

Q. Now what course was your formation on at the time you first observed this tanker? A. We were on two five seven, or coming to two five seven. I think we were on two five seven.

Q. Now the course you had been on before you were on two five seven was also a westerly— [185] A. Two seven 0.

Q. Had you been on two seven 0 long; more than five minutes? A. We came to two five seven, I believe at zero one five zero. And I believe we came to two seven zero at about zero one one five.

Q. Now what reports, if any, did you receive from your C.I.C. with reference to this vessel which you could see visually yourself? A. Shortly after I had sighted the light and made sure it was a red—a green running light, we, I ordered C.I.C. to start a track. And shortly afterward, I would imagine two or three minutes, we got a report, collision on the Capricornus at zero two 0 nine, I believe it was.

Q. That was a prediction now. Did you continue? A. That was the initial report that I got from C.I.C.

Shortly afterwards, I would say two or three minutes, we got the report that the tanker, or the crossing ship, would clear that the screen, and that the C.P.A., I think, would be at three twelve, seventeen hundred yards from the guide.

Q. What, if anything, did you do with respect to this stranger vessel which was coming into your formation from your port hand? A. Well, at least, I was very apprehensive. The ship [186] presenting its green running light, as it had, and apparently in a crossing situation, kept my undivided attention. As we say in the Navy, sweated it out. I thought that the crossing ship would turn, stop, or do something to avoid crossing ahead. I repeatedly asked C.I.C. to keep me advised of the track which they did. Also my watch officer and I and my chief staff officer could observe the crossing ship from its running lights. Its running lights became visible as it approached toward the left-hand ship of the screen. It did not change even after it had passed the left-hand ship of the screen.

I thought it would still take avoiding action, but it kept crossing ahead of the screen. During this time I was also

advised by my junior watch officer, Ensign Gilliland, who was running a grease pencil track on his remote, or repeater scope on the tactical bridge; I was being kept advised of him, of the TAC, his track there locally agreed with the transmitted track, the information that I got over the inter-communications system.

Besides all of this, why, you could actually see the ship; or its lights, as it progressed ahead of the two screen ships through the screen and most certainly as it passed ahead of the main body and ahead of the last, or ship nearest to the track, the Capricornus.

Q. At what point did you decide that the vessel was [187] not going to turn away and you would have to take avoiding action? A. That is hard to say. My intentions, as the track continued, was to take avoiding action after the ship had passed the screen. I think—I knew my main body was more vulnerable and, of course, at that time I had no way of knowing what this ship's intentions were. They might have turned right into my main body.

Q. Go ahead. A. The ship did continue on its track. In radar, as we noted it and the reported track, we detected no change of course on the part of the crossing ship. After the ship had actually passed through the screen, it was between the main body and the screen, and I verified this by C.I.C., by our local, remote, repeater, radar scope and by visual on the binoculars, both by me, my staff, duty officer and my chief staff officer. After she had passed the screen I took what I considered extremist action and slowed speed, I believe at about two 0 four, to eight knots and less than a minute later, feeling that I had not taken sufficient action, I slowed to five knots.

Q. Was this action successful? Did it— A. Yes, sir; as far as I know all ships answered, and we did clear, I judged, that we were cleared the Capricornus by five to eight hundred yards; and I considered it necessary [188] as an avoiding action.

Q. Now when did you first hear of the Ruchamkin?

The Court: Just a minute, Captain. You say you cleared the Capricornus by how much?

The Witness: I judged by binoculars and C.I.C. reported to me by about five to eight hundred yards, sir.

The Court: That is a distance between what two ships?

The Witness: That would be between the Washington, as she passed ahead of the Capricornus and the Capricornus bearing over on my starboard bow.

The Court: You meant you cleared the Capricornus and the tanker by that much; not your ship?

The Witness: Yes, sir. No, sir.

By Mr. McGovern:

Q. Thank you.

When was the first notice which you personally had of the Ruchamkin?

The Court: Before you start on that phase of it, suppose we take a break.

Take a short recess, Mr. Marshal.

(After Recess.)

[189] (The witness resumed the witness stand.)

By Mr. McGovern:

Q. Captain, did you have any signal men on the Fremont challenge the tanker as she went by? A. Yes, sir; after the crossing ship had passed ahead of the Capricornus about two or three minutes later, I ordered that

the unknown ship be identified by signal. She was signaled to and I got the report that there was no answer.

Mr. McGovern: I would like to offer the depositions of the witnesses, Jere and Blackman, who are the signalmen who did the challenging. Their testimony was taken July, 1954, by Mrs. Wilson—I am sorry—by Dorothy Ledet.

(The depositions were filed in open court.)

By Mr. McGovern:

Q. Now, Captain, had you seen or had you received from your C.I.C. any report as to the location of the Ruchamkin at the time that this stranger vessel went through your formation and went in front of you? A. No, sir.

Q. Had you requested your C.I.C. to get you a range and bearing on the Ruchamkin previous to this? A. My memory is that I had, sir.

* * *

Cross-examination by Mr. Crenshaw:

[202] Q. Now this particular night, the screen commander was active in keeping his screen position ahead of you, and did you have to delay your orders or because of the slowness of the screen, or were they prompt in carrying out their orders? A. I think everything was normal, sir.

Q. Everything was normal. Now, Captain, the Operations order, as I understand, call for your sailing from Norfolk on a generally easterly course for a time, then turning to the south, and then turning to the beach: is that correct? A. Yes, sir. Those were the intentions.

Q. Those were the intentions. Now those intentions were expressed by you in your night orders, were they not? A. Yes, sir.

Q. They were, however, not carried out, were they? A. They were not. It was not possible to carry them out, sir.

Q. Why, Captain, was it not possible to carry them out as planned? A. The first part of the evening, in proceeding to the east, we had a squadron of ships, another Operation, naval Operation to the southward of us and they were in an overtaking position to the south of us, but it took quite a long time [203] for them to pass us, and we were delayed by this particular formation. I did slow down to let them overtake, so that I could make my change to the south and about that time we had targets on the starboard bow again, and we were in no favorable position to turn south then, and we were clear to the north. So I turned north after delay of about fifty-five minutes. I believe:

Q. Now the turn to the north was about fifty-five minutes after midnight, was it not? A. Zero zero fifty-five, yes, sir.

Q. Then you turned west again, or you turned west to two seven o? A. Yes, sir.

Q. That time was approximately fifteen minutes after one, was it; about twenty minutes later? A. Yes, sir.

Q. Now what was the purpose of holding that northwardly course, that length of time? A. Well, I wanted to change as soon as I could after I got on a northerly course, and we did, as you mentioned before, have the period there of orientation of the axis. They were given a preliminary order regarding the change to the west, and it took them five or six minutes, I guess, to get oriented and report.

Q. So that you stayed on a northwardly course until [204] your screen had settled down into the new positions? A. That's right.

Q. Then your turn to the west— A. That's right.

Charles N. Day—for Government—Cross

Q. After you turned to the west, you had to go through the same sort of procedure; the screen had to resettle again; is that correct? A. Yes, sir.

Q. Now then, I understand— A. No, sir. No, sir, the change from north to west, the screen oriented while the main body was on a northerly course, oriented to the new formation course during this period that we were going north.

Q. So it's your understanding that the screen was already oriented to the new course at the time you changed from north to west? A. Approximately so; yes, sir.

Q. That is your understanding? A. Yes, sir.

Q. Have you any idea, Captain Day, how long it would take your screen to reorient? A. We talked that over before the formation, and the screen commander wanted ten minutes, sir. I believe he could do it in five minutes in an emergency.

Q. Captain Day, did he want ten minutes to reorient [or [205] did he want ten minutes advance notice of the course change so that he could tell his screening officers that he was going to have to reorient and so they could work out their maneuvering board solutions and be ready to reorient? A. No, I think it was to include both the preliminary notice and getting—

* * *

[206] Q. Now then there came a time after the change from north to west, that you changed course of this formation from two seven 0 which would be due west, thirteen degrees to the left, to a course of two five seven? A. That's right, sir.

Q. I might add that you, I understand, that you changed speed about one thirty-four from twelve to fourteen knots; is that correct? A. From ten I believe.

Q. What, sir? A. I believe I had the speed ten going north, if I am not mistaken.

Charles N. Day—for Government—Cross

Q. Was it ten or was it twelve, or do you recall? A. I recall it is ten, sir. I am not sure.

Q. All right, sir. Then you changed course at about ten minutes of two from two seven 0 to two five seven? A. Navigational course to Camp Pendleton.

Q. That course of two five seven was designed to take you to where? A. Camp Pendleton, sir, where the assault area landing—

Q. Is there a Point Yoke that was mentioned in your Operation order? A. Yes, sir; I believe there was.

Q. Now was that a point off Camp, the beach at Camp [207] Pendleton to which you were actually headed? A. I believe it was. I can't—

* * *

[228] Q. Now, Captain Day, your C.I.C. being the C.I.C. for the flagship, would it have any control over these radar contacts or the dissemination of information pertaining to [229] those contacts A. Yes, sir; that is standard procedure to keep your ships and your formations informed of raid designations, the letter designations, and keep them informed of any alerts or any warnings as well as to keep the O.T.C. or the tactical bridge informed of such things.

Q. Then your C.I.C. would inform you of the contacts and would inform the other ships of contacts? A. That is my understanding of the way it works, sir.

Q. And it was performing that function on this particular night? A. I think it was, sir.

Q. And all of the vessels in the formation would know it would be doing that, would they not? A. That is the normal procedure; yes, sir.

Q. They would expect the O.T.C. to broadcast solutions or information concerning contacts over that circuit? A. Yes, sir.

Q. Now, Captain Day, do you have any recollection of a solution on the contact that developed to be the Wash-

ington to the effect that it was anticipated that the closest point of approach would be collision with the formation? A. No, sir. The first report that came to me on the bridge shortly after I set them onto this particular target, radar target, was collision course on the Capricornus at, I [230] believe, zero two 0-nine. That is the first report that I got, sir. Very shortly after they started tracking.

Q. That commencement of tracking was about the time you changed course to two five seven, was it not? A. I think we were on the course, sir.

Q. That would be what time with relation to one fifty which is when I understand you changed to two five seven? A. That's right. It may have been at the same time or just a little bit before, sir. We had been looking at the light before I started them tracking, sir.

Q. Uh-huh. And it was about that time, about one fifty then that you had this awareness that this contact, anticipated point of approach to your formation was collision Capricornus? A. I would say two or three minutes after I had started them tracking, sir.

Q. That was about one fifty or thereabouts? A. One fifty-three, something like that, sir.

Q. Now, Captain Day, did that solution change? A. Yes, sir. I, as the Commander, would not rely on one solution. I most certainly wanted them to keep tracking and to get a standard, steady solution which I did.

Q. Did it change before your speed reduction? A. Oh, yes, sir. Yes, sir.

Q. You don't think your speed reduction had much effect on it then, do you, or do you? [231] A. I think the speed reduction was made as a result of knowing where the crossing vessel was going, at least, knowing the approximate track by radar. Most certainly I had to wait until the ship got through the screen before I could take my extremist action.

Q. So that you couldn't give any instructions to your formation until after the vessel had cleared the screen? A. That is it. That was my judgment on it. Yes, sir.

Q. You are sure that you didn't do that, or attempt to do that until after she got inside the screen? A. No, sir; the ship, the Washington, was well inside the screen before I reduced. That is by visual and by radar; both.

Q. Captain Day, do you know how far away the Washington was at two minutes after two on this particular morning? I am speaking of from the Fremont. A. No, sir; I don't. I don't believe—I can't recollect it here.

Q. Do you have any recollection of a maneuvering board plot, or presentation which was introduced at the Coast Guard hearing and which has been attached to the Government's Answers to Interrogatories in this case concerning that position? A. Yes, sir; I do. I believe that was the moving, the relative movement chart prepared by Commander Whiting.

[232] Q. That was prepared by Commander Whiting, who was the chief staff officer on your staff? A. Yes, he was the chief staff officer and with me on the tactical bridge.

Q. Now would you look at that chart, please, sir, and tell me what the range and the bearing was of the Washington from the Fremont at two minutes after two, according to that chart, that plot? A. I believe it is about two three five and it shows here about four thousand yards. I can't see the screen here.

Q. The screen wasn't placed on this, but that plot is outside of this dotted circle by this number four, almost to the next dot? A. Yes, sir.

Q. Now what would that make that range? A. This being, if this is a thousand yard scale, that would be one, two, three, four.

Q. And so some few hundred yards beyond that? A. Yes, sir.

Q. About forty-three hundred yards, would you say? A. Forty-two, forty-three hundred on that particular diagram, sir.

Q. Captain Day, do you remember the position of your screening vessels, their locations? A. Not by exact degrees. I know that the two center [233] screen ships were about thirty-three degrees on each side of the course line, and they were about thirty-seven hundred yards distance from the guide and the two destroyers on the end were about fifty-nine hundred yards, I believe.

Q. Then at two minutes after two, your plot on the Washington then would place it some six or seven hundred yards outside the screen, the thirty-seven hundred yard circle? A. If that is it; yes, this plot that you show me; yes, sir.

Q. Now, Captain Day, when did you attempt first to transmit your message about slowing to eight knots? A. As I remember the order went out about zero two 0 five, sir.

Q. Did it go out more or less instantaneously? A. Yes, sir; it was an execute immediate signal.

Q. And there was no delay about it? A. No, sir. The Washington at that time was well within the screen and that's between the screen and the main body and could be readily seen visually as being there, sir. This was also specifically reported and as inside the screen by C.I.C. and by my, by the ensign on the bridge, who was Ensign Gilliland, who was making the grease pencil plot.

Q. What person in C.I.C. informed you of the position of the Washington inside the screen at this time? A. I couldn't say. It comes over the voice communication [234] system, ship's communication system, and in turn would be transmitted to me from the communication room on the tactical bridge.

[237] Q. Now all of this time, you were talking about privilege; [238] burden, responsibility, as between the Washington and your formation; that is the way you viewed it, was it not, Captain? A. Yes, sir; as between the Washington, my formation and each individual ship in which she violated the rules of the road and crossed ahead of.

Q. Now you speak of this privilege situation, doesn't the rule to which you have referred as the starboard hand rule require you to maintain course and speed? A. It does; yes, sir, except in the extremest condition where you know your ships are in danger.

Q. Now under your concept of that, you had felt then that the situation had gotten to a point where you could not avoid collision, or the risk of collision except by failing to hold course and speed, by doing something else; is that correct? A. Yes, sir; I considered my change of course about the safest solution once—

Q. You mean your change of speed? A. Change of speed once the Washington had crossed through the screen. The screen was pretty far apart. The ships were two miles apart or so. And there was, as you saw, the track coming down, you could see there was a chance of coming through without endangering the screen too much. They are highly maneuverable ships. They are all on their own, have their own commands, responsibilities, but this main body [239] with a thousand yards radius was a group of, it was a different situation, and I felt that this crossing ship could be more readily avoided if I slowed. I did consider it extremest action.

* * *

[244] Q. And did he not tell you at that time that the Ruchamkin would take station three? A. I do not recollect it right now, sir.

Mr. Crenshaw: I must apologize to the Court for these delays.

The Court: Suppose we take a short recess, Mr. Marshal.

(After recess.)

(The witness resumed the witness stand.)

By Mr. Crenshaw:

Q. Captain Day, have you had an opportunity to read over your testimony before the Court of Inquiry? A. Yes, sir. Yes.

Q. Have you had an opportunity to read over any of the others like Captain Persons' testimony? A. No, sir.

Q. Captain Persons, before the Court of Inquiry, on page twenty, I believe it is, testified as follows:

> "At some time between zero one forty-four, thereabouts, Ruchamkin reported for duty. At that time she was bearing zero eight four true from Hollis in station one distance nine thousand yards. I told Ruchamkin to close formation and be prepared to take her station in the screen when so directed. I also told Ruchamkin to [245] expedite closing. I informed O.T.C. that Ruchamkin was proceeding to close the screen and that I would tell her to take station, that I would order a five-ship screen and place Ruchamkin's station when she had closed. He asked me for a bearing of Ruchamkin from him and I gave it. I believe, as approximately zero six five true from him. The exact range I cannot recall, but it was something like sixty-five hundred yards from the guide Fremont, my estimate."

Now do you recall receiving that information from the screen commander? "I informed O.T.C. that Ruchamkin

was proceeding to close the screen"? A. Yes, sir; I don't. I recollect a message which said that they intended to form a five-ship screen, sir. That's my recollection.

Q. Now, Captain Day, if you had received this message, did you have or some of your flag officers have a plot of your formation so that the position of the Ruchamkin could be ascertained approximately from that message? A. Yes, sir; I would say we could plot it.

Q. You could plot it and if you had plotted it, would it not show that the Ruchamkin was somewhere off your stern or starboard quarter? [246] A. Yes, sir.

* * *

[250] Q. Did you not also state that you had had to slow down during the middle of the night to try to let that group [251] to the south draw past you? A. Yes, sir; we did.

Q. Would it be fair to say you were a little bit behind your timetable about two o'clock? A. Yes, sir, but we still intended turning at twenty-four hundred.

Q. Now I know that you had issued a change of speed at ten minutes past two, resumption to fourteen knots from five? A. Yes, sir.

Q. Now what was your purpose then in ordering that speed change? A. It was to better my time back to the assault area.

Q. You were anxious to get on with the maneuver? A. That's right, sir.

Q. Now, Captain Day, were any of your vessels operating under darkened ship instructions? A. No, sir; we had had it be prepared to darken ships, in the instructions, in the Operation order. That is a normal procedure. But at no time were the ships at darkened ship. All of them had all their running lights at all times and ships lighting, all of the ships, lighting of all ships was on also.

Q. In other words, there would be some lighting in the hall or compartment spaces? A. That's right, through the eye ports, deck ports, and [252] whatnot.

* * *

HENRY STAMFORD PERSONS, witness for the government, *direct examination by Mr. McGovern:*

[275] Q. Now had additional directions been given to the Ruchamkin by you at the time of the collision? A. None had been executed.

Q. Now, sir, getting back to the facts of the collision, when did you first, you yourself, first become aware of the presence of the vessel which later turned out to be the tanker Washington? A. The first time that I remember was after completing the reorientation of the screen when the formation changed course to two five seven. That would have been somewhere around one fifty. I had remembered that there were lights on both bows but the Washington had not come to my attention as any particular ship in the crossing situation up until that time.

Q. At that time how did she come to your attention and what did you see? A. She was the nearest ship on the port bow, and I looked at her through binoculars and saw a green side light as well as the two white running lights, and she appeared to be on a crossing course.

Q. Now on what ship were you at this time? A. I was in the Hollis.

[276] Q. What part of the Hollis? A. On the bridge of the Hollis.

Q. How did you obtain any reports from the radar room of the Hollis? A. I requested a report to include the closest point of approach of the contact and I was told to wait, that our recent change of course, when we were reoriented, the screen required that they replot the situation.

Q. Did you wait? A. I waited, and then before I got a report I saw the Washington change course to the right, so

that I saw both her side lights and then I saw only the red side light together with, of course, the two white running lights.

Q. About what time was this with relation to the time that you first saw the Washington? A. Oh, some five or six minutes later, perhaps one fifty-six.

Q. What, if anything, did you do upon seeing the Washington make an apparent change of course to her own right? A. I notified the O.T.C. over the secondary tactical circuit that the vessel on the port bow had changed course radically to the right and would pass through the formation on approximately a reciprocal course. That message, of course, was addressed to the O.T.C. but it was on a circuit that all ships were up on so it constituted a general warning signal.

[277] Q. Now what happened next with respect to this contact? A. Do you mean what the contact did?

Q. That's right. A. The contact passed between Lloyd and Hollis. In other words, about through the center of the screen, and then passed ahead of Capricornus, which was in the northwest corner of the main body. I don't know the distance. Passed ahead of Capricornus.

Q. Did you keep the contact under observation during this time? A. I did as long as possible.

Q. Now what were the possibles? A. Well, on radar I was using the P.P.I. on the bridge, radar, the Washington passed in the blind spot of our radar, that is, the shadow caused by the mast, when it reached a cone astern of the ship, that is some degrees on either side of the ship's stern, visually I had lost the Washington's lights against the lights of the main body. In other words, the Washington's side lights and masthead lights merged with the lights of the main body and I could not see which was the Washington.

Q. When did you next gain observation of the Washington? A. When she came clear of the main body some minute or minute and a half before the collision.

Q. Had you been asking your radar for a plot on her [278] during this time that you had lost her? A. I did not ask them for a plot because I could see on the P.P.I. they did not hold her.

Q. Now what was the apparent course of the tanker when she next appeared after clearing the main body? A. At best estimate I could make she'd changed course some, well, it appeared to me, considerable amount to the port.

Q. To her own left? A. To her left. To approximately the course that she was on when I first sighted her.

Q. Now could you see the Ruchamkin at this time? A. Yes.

Q. Where was the Ruchamkin at this time? A. Ruchamkin was coming up clear of the starboard side of the formation, and my best estimate is that she was on a track that would, so that she would pass some two thousand to twenty-five hundred yards outside of the formation.

Q. Now what was her apparent track with reference to the tanker? A. The last plot—I should not—excuse me, I should not say the last plot. The last information I had from C.I.C. was as the tanker was going down through the screen and ahead of the main body, was that the tanker would pass clear of the Ruchamkin, astern.

Q. Clear astern of the Ruchamkin? [279] A. Clear astern of the Ruchamkin.

Q. What was the name of the officers in C.I.C. who gave you that—

The Court: Just a minute. Tell me that again, Admiral.

The Witness: As the Washington was passing down ahead of the main body, having passed through the screen, they naturally were plotting in C.I.C., and I checked with C.I.C., and they told me that Washington would pass astern, clear astern of the

Ruchamkin. There was no distance involved, but from a check later, based on the changes of course that the Washington made, it must have been at least eight hundred yards she passed clear astern.

The Court: Thank you, sir.

The Witness: You asked a question I think.

Mr. McGovern: I think so.

Your witness.

The Court: What was the approximate course of the Ruchamkin at that time?

The Witness: A rough guess, sir, would be two seven zero, the course.

The Court: Two seven zero?

The Witness: The course that the formation had been on, she was slightly diverging from the [280] formation course.

* * *

Cross-examination by Mr. Crenshaw:

[297] Q. At something approximately zero zero forty when the main body was in formation axis two ten true, the signal was given to reorient—pardon me—it is signal was given to change course, formation to north zero zero true. I then directed the screen to change screen axis to zero zero true. After the signal was executed, the next signal that was given was to change formation course to two seven o true. I gave signal to reorient screen axis to that same bearing, two seven o true, shortly before zero one four five. The formation then was on course two seven o. The screen axis was two seven o true. The axis of the main body formation was two ten true and speed fourteen knots. At some time between zero one forty or thereabouts, Ruchamkin reported for duty. At that time she was bearing zero eight four degrees true from Hollis in station one, nine thousand yards. Is that correct, sir? A. I assume so. I know that there was at some time about then.

Q. Your recollection at the time you gave this testimony was much better than it is today? A. I believe so.

[298] Q. (Continuing) I told Ruchamkin to close formation and be prepared to take her station in the screen when so directed. I also told Ruchamkin to expedite closing. I informed O.T.C. that Ruchamkin was proceeding to close the screen and that I would tell her to take station and that I would order a five-ship screen and place Ruchamkin in station when she had closed. He asked me for the bearing of Ruchamkin from him, and I gave it, I believe, as approximately zero six five true from him. The exact range I cannot recall. But it was something like that. Sixty-five hundred yards from the guide Fremont, my estimate. Now that is a correct statement of the sequence as near as you can recall, is it not? A. As near as I can recall; yes.

Q. Therefore, the range and bearing of the Ruchamkin at zero one—excuse me, at some time between zero one forty or thereabouts was zero eight four true and nine thousand yards? A. Yes.

Q. Now at that time— A. From the Hollis.

* * *

[315] Q. Let me ask you this. What we have tried to do by this diagram is to show in general what the screening ships would have to do. In other words, the O'Hare would have to speed up and go to the right of the course line; the Hollis would have to go a little to the left of the course line; the Lloyd would go quite a bit to the left of the course line, and the Corry would go way to the left of the course line, and slow down. Now are those general statements more or less [316] correct? A. The general statements are more or less correct. I do not like the track, for example, of the Corry because what time were you executing for the Corry now?

Q. We executed upon one-forty. I don't have the time on her. A. This is a ninety degree change.

Q. But it was the time at which her logbook indicated she did execute that signal. A. You did?

Q. Yes. A. Because the point is, of course, we have emphasized before that the reorientation order by me was executed usually some five to seven to eight minutes before the main body changed course, and the time of that would make the tracks different.

Q. So that your difficulty with that diagram is the precise courses and speeds; it depicts more than the general plan that it depicts? A. The precise courses and speeds and times in connection with the Corry would change the picture completely. I mean any variations in those could change that sharp elbow you have in there very definitely. The others, I believe, are generally correct.

* * *

[322] Q. Would it be helpful to show you the radar plot which [323] was taken from the Fremont and put a maneuvering board back under that to reorient? Would that help you in your estimate? A. Possibly.

Q. Now, Admiral, I show you what has been introduced in the Coast Guard as Exhibit 22, which purports to be a radar plot, or a reconstruction of the radar plot from the U.S.S. Fremont. It shows positions or plots of the Washington from one five o, one two four five, and two o two. It does not show the position of the screen because at that stage of the proceedings those positions were treated as classified. With the aid of that and the maneuvering board which you have in front of you and that tracing, could you show us where you think the Washington was when you sent this message that she had changed course to the right radically? A. Well, I can try. Realize, of course, this is a planned view and I was looking at—here I would have to do a little estimating. I sighted her over here about—just before that—some eight thousand yards away. (Plotted.) I would say she is right about there.

Q. You placed— A. That is approximately.

Q. You have placed a dot with a W by it? A. With a circle around it.

Q. Admiral Persons, if the Washington at that moment had, as you supposed, changed her course to the right so as to [324] be on an approximate reciprocal of the formation's course, could you indicate to us by a green dotted line what you would expect her relative movement to be? A. Allowing for a transfer it would be approximately like so. (Drew on the paper.) Well, no, I had to bring that over some. I am sorry. It would have been approximately through the Lloyd.

* * *

[334] Q. On the radar it appeared that the Hollis, was coming [335] very close to those ships in the northeast section of the formation, the Capricornus, and possibly to the Glynn, as it neared the main body, the vessel merged with the navigation lights and other lights of the vessels of the main body and shortly thereafter went into the blind spot of my radar. Is that correct? A. That is correct.

Q. At some time approximating two ten the O.T.C. increased formation speed to fourteen knots, and although I could not be certain it appeared that the vessel cleared the main body. I still did not have it on P.P.I. That is correct? A. That is correct. I did not have it on P.P.I., did not have it clearly visually.

Q. I turned around and checked the PIP's on both bows and then turned back to this vessel. Shortly thereafter it came out past lights of the main body and it appeared to have changed course to the left and was heading in the vicinity of the Ruchamkin. I picked up the microphone for the primary screen circuits to call Ruchamkin and then realized the vessel was so close to the Ruchamkin that anything I told them would serve only to distract

them, and not to help them. The Commanding Officer of the Hollis and I standing side by side watched it through binoculars and I asked him if he thought it would pass clear. He said I believe Ruchamkin had passed [336] ahead. Shortly thereafter about a minute to a minute and fifteen seconds after I picked up the headset for Ruchamkin, I got over the screen primary, "I have been rammed I am sinking Please help me." Now that is a correct statement, nearest of your knowledge? A. To the best of my knowledge, yes.

Q. First as to the statement that you—the Washington became merged in the navigation and other lights of the formation. Could you tell me very briefly what those other lights were? A. The lights that are normally around any ship at sea not darkened or out of portholes and so on. The lights such as Washignton showed out of portholes.

Q. So that there were a number of lights, each one of these ships? A. That's correct.

Q. Quite a glow of illumination? A. I wouldn't say glow, but there was a background of lights.

Q. Against that background of lights you lost the Washington when she was between you and those lots of lights? A. That is correct.

Q. You also lost the Washington as she came through [337] your blind spot of the radar? A. That is correct.

Q. Now as she came out near the Capricornus about two ten, you didn't have it on your P.P.I. scope, did you? A. No.

Q. As I recall your direct testimony you didn't inquire of C.I.C. as to where she was because you knew they didn't hold her, because you didn't see her? A. That's correct, same radar.

Q. There is nothing in this testimony that mentions any solution from your C.I.C. that this vessel was going to pass

astern of the Ruchamkin? A. If you will refer to the cross-examination where I cross-examined Lieutenant Slabey, later on in there I believe you will find that is brought out.

Q. Now how long would it have taken you to call the Ruchamkin and say, Did you see the stranger? A. Well, it depends. If I waited for an answer and had somebody come over to pick up the microphone, it might have been fifteen, twenty seconds, but it might have diverted them just at the time.

Q. How long would it have taken you to get that message out when you held that mike in your hand, the microphone in your hand? A. Probably ten, fifteen, twenty seconds.

* * *

[340] Q. Was that introduced into the Coast Guard testimony, do you know? A. To the best of my knowledge, it was.

Q. I show you here Exhibit 23 which was produced, which was produced as an exhibit before that and ask you is that the sketch taken from the models as you placed them? A. Since my signature is on it, I presume it is.

Mr. Crenshaw: I would like to introduce that.

Mr. McGovern: No objection.

The Clerk: Texas Defendant's No. 6.

(The Clerk so marked the sketch as Texas Defendant's Exhibit No. 6 in evidence.)

The Court: Let it be admitted.

Mr. McGovern: They have an exhibit before that which has not been offered yet.

Mr. Crenshaw: That is correct. That is all, sir.

The Court: Mr. McGovern, is there any redirect examination?

Mr. McGovern: No, your Honor.

Charles T. Ryan—for Government—Direct

The Court: Let Admiral Persons stand down.

(The witness stepped down.)

Mr. McGovern: May this witness be released, your Honor?

The Court: Let him be released from the subpoena.

Thereupon, CHARLES T. RYAN was called as a witness by counsel on behalf of the Government and, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. McGovern:

Q. Your name is Charles Ryan? A. Yes, sir.

Q. Where are you presently employed? A. D-a-n-n-e-m-o-r-a. Dannemora State Hospital, Dannemora, New York.

Q. In what capacity? A. I am a criminal hospital attendant.

Q. You have to get back there tomorrow? A. Yes, sir; I do.

Q. Were you a signalman on the U.S.S. Ruchamkin on the evening when she had a collision wtih a tanker? A. Yes, sir; I was.

Q. Did you attempt before that collision to send a signal announcing your arrival to the officers in Tactical Commaind? A. Yes, sir; I sent a signal.

* * *

[383] Thereupon, A. C. JACKSON was called as a witness by counsel on behalf of the Government and, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. McGovern:

Q. Captain Jackson, where were you born? A. Fayette-

A. C. Jackson—for Government—Direct

Q. Where did you go to school? A. I went to the Robert E. Lee Grammar School. I went to the Lincoln County Central High School in Fayetteville. I went to Tennessee State College, Murfreesboro, Tennessee.

Q. Where did you first join the Navy? A. In Macon, Georgia.

Q. What date, year? [384] A. To the best of my memory it was the 21st of May, 1941.

* * *

[386] Q. Were you the Commanding Officer of the U.S.S. Ruchamkin when she had a collision? A. I was.

Q. With the tanker?

I show you a diagram marked—

The Clerk: No. 16 for identification.
The Court: What is your present rank?
The Witness: Lieutenant Commander, sir.

By Mr. McGovern:

Q. No. 16 for identification, and ask you what it is. A. This is a schematic diagram of the bridge of the U.S.S. Ruchamkin.

* * *

[389] Q. Where did you find the formation? [390] A. Well, after I had passed this—I don't remember the exact time, but after I had passed, after I left the beach—well, we could see the formation on radar, and I proceeded to carry out my instructions and I followed them on out and I approached the formation and was awaiting them to make certain maneuvers they had to make before I could join.

Q. Which way did you approach the formation, from the front, the rear or the side? A. Well, they were going east. I was also going east. I was following at that time.

Q. I see. How long did you remain behind the formation? A. Until after they had turned.

Q. Now how far behind were you at this time, if you remember? A. Well, I was various distances behind them, ranging anywhere from about nineteen to twenty miles on up until I was within a mile of them or less. Considerably less, as a matter of fact.

Q. Now have you read the testimony of Mr. Hirshman, your radar operator? A. Yes, sir.

Q. Now do you recall in his testimony he spoke of a radar contact which he was told to scrub? Do you remember that? [391] A. I do, sir.

* * *

[394] Q. Well, now, we are interested in the situation during the approach. Now in your own way, taking as much time as you want, will you go through the approach from the time that you reported that you were ready to join up to the time of the collision? [395] A. May I refer to my—

Q. No, not yet. A. Well, I don't—if I may say so, that's been approximately two years and eight months. I will do the best I can.

I won't try to give any exact times.

Q. That's right. A. The first, when I had taken it up to where they had brought themselves around on the, to the course two five seven, and we had followed them around, the O'Hare—the man that was in the U.S.S. O'Hare was in the screen. He was in the extreme starboard end of the screen, and when we started around, well, I realized that he had the furtherest distance to go of any of the screen ships, and I had a problem of not embarrassing him or not embarrassing the heavy ships and still fetching up where I should be. So I followed various courses and speeds around the formation until I steadied up on about the same course that we were. I

had used particular pains to keep him about anywhere from ten to fifteen to twenty degrees on my starboard bow. And at the same time keeping a close watch on the ships on the other side that I didn't embarrass any of the heavy ships.

And like I say, we reported that we were ready to join. If I remember correctly, the answer I got to that was a "wait," which I interpreted to mean that they weren't ready [396] for me to join, which I did. Then to the best of my memory there was an order came from the screen commander to change screen formation which would give me a place to go.

I don't ever remember that signal being executed, but I do remember that the people started to move, to give me a place to go. Of course, there was plenty of room out there. I could have slid into formation and still left room on either side with the other people even if they hadn't moved, but they started to move to give me my place to go. And I had told my people and the Combat Information Center to give me a course to station, to keep me about where, from a thousand to fifteen hundred yards clear of the closest heavy ship.

I was proceeding up the starboard side from the starboard quarters so to speak, of the formation, parallel to the formation and forward into my station. I had come around and they were steaming on two five seven.

Well, I knew that my screening station was out to starboard of the formation, so I was steaming, if I'm not mistaken, two six zero. It was three degrees divergent from their course which would take me more to starboard, waiting for the orders to come, to go where I was supposed to go, and then I was told to expedite moving to a point where I could go to station, which I did. And then the formation, I was ordered to slow down. They were making fourteen knots. They were ordered to slow down from fourteen knots to [397] eight knots, and then

from eight knots to five knots. Well, when one ship is behind like that, they frequently slow down to let him catch up, which I interpreted this as a logical thing, and as I came up abeam of the formation and I think I had between five and six thousand yards to go to station while they went back to fourteen knots, and I was making twenty-two knots at that time, and speed differential from eight knots to twenty-two knots would have taken me up to station in fairly respectable rate of speed, and just about the time of the last speed change, I think it was, I was ordered to continue to expedite going to position to take station, which I did; was already making twenty-two knots. That was practically what I had available. I kept one knot, I think it was, in reserve.

* * *

Cross-examination by Mr. Crenshaw:

[453] Q. I am trying to find out when some human on your vessel sighted the lights that developed to be the S.S. Washington. [454] A. Well, I had previously told you that I had seen the lights.

Q. Captain, I don't mean to interrupt you, but there has been a lot of testimony in this case. You have testified before the Navy, before the Coast Guard and now before this Court. Now, for the purposes of this litigation, there is no evidence in this case, or any record in this case except what goes into this Court's proceedings, so it will be helpful to the Court and to me and to Mr. McGovern if you could just clarify the situation. We know that you are intimately familiar with this and that you have been through it a number of times and it is difficult to separate these various things in your mind, and I don't mean to be pressing you, but I do want to find out now from you by a simple statement when it was to your knowledge that someone on the Ruchamkin sighted the lights that developed to be the Washington. A. Well, obviously,

A. C. Jackson for Government—Cross.

Mr. Crenshaw, I can only testify what I know of my own knowledge and I think that I have previously testified what you hold there, that my best estimate that when I first saw this ship, that I thought it was about eight hundred yards. I also further testified that I thought that was within two hundred yards of where I expected the Glynn to be. You have perused that at some length. You know that to be a fact. And Mr. Jarboe had been on the ship approximately five months, and his estimate between a thousand yards and my [455] eight hundred yards is simply a matter of personal opinion. I would say that he probably, if that is the case, saw it about the same time I did.

Q. And that is the basis for your statement that you saw the ship before anybody else in your vessel? A. I feel certain, reasonably certain that I was the first one to recognize the danger that it represented.

Q. Now when you first sighted the lights that developed to be the Washington, at approximately eight hundred yards, did you recognize then the danger which I think you have described as terrible and imminent? A. No, sir; not immediately.

Q. You described sighting two white lights, a masthead and a running light and then a green light and stating that that tied in very well with what you expected to see in approaching the Glynn from the starboard side; is that correct? A. That's correct.

Q. Now do you recall which of those lights was lower than the other, whether it was to the right or to the left of the other? A. Well, of course, your running light is over your mast light, mastheard light. The mastheard light is higher and higher than your side light normally.

Q. And that inter relationship between those two lights is of great help to mariners in determining direction [456] of vessels, is it not? A. Very true.

A. C. Jackson - for Government - Cross

Q. Did you notice on this particular night which light was lower than the other? A. I don't remember offhand, but I do remember that when I was coming up there that I could, when I finally spotted this ship, for what it was, I saw it was closing me, and I spotted that bow wave, got right full rudder to get out of there, if I could; if I had turned left, I would have gone right into the formation which was just as dangerous as what was happening to me.

Q. As to those lights then you don't remember looking at them to determine which of those two lights was lower than the other, do you? A. Which lights specifically are you referring to? Are you referring to the side lights, the masthead or the running?

Q. When you saw two white lights which you assumed to be the masthead and running lights of the vessel and the green light which you assumed to be the running light of a vessel, do you remember whether you made a conscious effort to tell which light was lower than the other of the two white lights that you sighted? A. Well, obviously, your - if what I saw, the running, the masthead light was lower than the running light [457] have to be - well, if you look at a ship like so, well, here would be your running light, your masthead light and your side light. If you came up from astern, you would see it exactly the same sequence of lights.

Q. That's right, so you saw what you expected to see? A. Exactly.

Q. A light which you thought was a ship in the formation? A. That's right.

The Court: Mr. Crenshaw, have you reached a breaking point?

Mr. Crenshaw: I have.

The Court: Mr. Marshal, recess until 2:15.

A. C. Jackson—for Government—Cross

AFTER RECESS

(The witness resumed the witness stand.)

By Mr. Crenshaw:

Q. Captain Jackson, before lunch we were talking about your observations as you came up and sighted the Washington. Now, Captain, we have made frequent references to the Court of Inquiry testimony and I would like to make one more on page 55 in the middle of that long paragraph, which runs from a little bit above the middle of the page to the bottom, a sentence near the right edge of the page with the two words "so shortly" and then on the next line thereafter—have you been able to find it? A. I see it.

* * *

[465] I have a brief explanation for that, if you would [466] care to hear it.

I had no knowledge of the fact that the Carter Hall had failed to go out that night. If we had taken a ship count, we would have come up with the right number of ships. The ships appeared to be, I would say, in a twelve-mile scale except for maybe short intervals and the appearance of the formation, as you can imagine, of several ships very close together, it looks like, shall we say, a cluster of grapes. It would have been very difficult for me to have picked out one ship amongst them.

Q. Thank you, sir. A. Which is essentially what I told you five minutes before.

Q. Now, Captain, at or just before the collision, did you sound any whistles? A. No.

Q. Or did you hear any whistles being sounded? A. I previously testified in this court that after my bow had passed the bow of the Washington I heard several short blasts on his whistle.

Q. Do you happen to recall how long before the collision it was that you heard those blasts? A. It was a very short time.

Q. Would you say it was over thirty seconds? A. I would say it was something in the neighborhood of [467] maybe nine-tenths of a second, a second and a half.

• • •

[530] Thereupon GEORGE H. WHITING, was called as a witness by counsel on behalf of the Government and, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. McGovern:

Q. Captain Whiting, where do you live? A. I live in Norfolk, Virginia, sir.

Q. How long have you been in the Navy? A. I have been commissioned since June, 1936.

Q. June, 1936? A. Yes, sir.

Q. Were you a prisoner of war of the Japanese? A. Yes, sir; for two years and five months during World War II.

[531] Q. Were you a Commander at the time of the accident between the tanker Washington and the Ruchamkin? A. Yes, sir; I was.

Q. What were you assigned to; what duty were you assigned at that time? A. At that time I was Chief Staff Officer, Operations and Plans Officer on the staff of Commander, Transport Division 22, Captain Day.

Q. Now, Captain Whiting, we have produced you today in response to a telegram from the counsel for the Texas Company, after we provided them with your testimony before the Navy Board of Investigation, and accordingly there is only one matter on which I want to direct your attention on my examination. That is, were there any

limitations on the beaches along the Atlantic Coast which could be used for amphibious training operations of the type which was involved in Operation Seascape? A. There were only two beaches on the entire Atlantic Coast which were suitable for this purpose. Those were the beaches at Camp Pendleton, Virginia, just south of Virginia Beach, and the beaches of Onslow Beach, North Carolina, near Camp Lejeune, North Carolina.

Q. One beach is above Hatteras and the other beach is below Hatteras? A. Camp Lejeune, the beaches at Onslow I believe are [532] just below Cape Lookout, I believe it is.

* * *

Cross-examination by Mr. Crenshaw:

[552] Q. Then, you'd have positions of relative danger then. Some places in there are less dangerous than others: is that correct? A. Yes.

Q. And the most dangerous place would be right in the middle, wouldn't it? A. In the middle of the main body.

Q. Yes, sir. A. That would be very dangerous.

Q. Now on this particular night, when do you recall having knowledge of the whereabouts of the Washington? A. It was within a minute or two after we had changed course to two five seven.

Q. Do you have any recollection of the range; was that the six point seven miles? A. As I recall it was a range about that time, sir.

Q. Approximately, when, Captain Whiting, did you have first knowledge of the position of the Ruchamkin? A. The first knowledge that I had that the Ruchamkin was close to the formation was at the time of the collision, sir.

Q. Now do you recall any activity on the flag bridge or among the flag officers concerning a contact at a bearing [553] of zero six five? A. I recall that I had just stepped out on the wing of the bridge and someone, I believe it was the Staff Watch Officer, came around from the port side

of the bridge to the starboard side where I was, and asked me if I saw a contact back in the direction of the starboard quarter, and I think he specified zero six five, and I looked and did not see anything at that time. I did not know then that I was looking for the Ruchamkin.

• • •

[570] Q. Now had you considered at that time whether or not [571] the Washington would have to it, assuming they were visible to them, the red light or the green light of the vessels in your formation? A. The Washington would have the red lights of the vessel in our formation up to the point where she crossed the bows of the particular vessels and then she would have both, or the green light. I mean as she passed each individual vessel, of course, she would get the green light.

Q. She would get the green light from that time? A. Yes.

Q. In your experience in the Navy and sailing in the formation and seeing merchant shipping, would you count on the tanker recognizing your lights as those of a naval formation? A. Well, I have had no experience on the other side, sir; that is, being a merchant ship. I would think that the tanker should have recognized the lights as being that of a naval formation, sir.

Q. Now were you asked substantially a similar question before the Court of Inquiry as to whether or not you would count on the tanker changing course or avoiding your formation? Do you recall that? A. Whether I would count on the tanker?

Q. Yes. A. Changing course. I do recall that question, sir, and I think my answer may need some clarification. As I [572] remember I stated I would not count on it. By saying that I intended that I would not have blind faith in the tanker changing course in accordance with the International Rules. That is, I would, as privileged vessel,

I would not hold on right to the bitter and expecting that she would change course.

* * *

JOHN D. CAIN, witness for the Texas Company, *direct examination by Mr. Brush*:

[657] Q. How much of that time have you spent traveling up [658] and down the Atlantic Coast? A. I couldn't say for sure. I'd estimate at least half of that time, though.

Q. In November, 1952, were you master of the tanker Washington? A. I was.

Q. Will you describe the Washington in a general way, the type of vessel she was, her approximate length, and so forth. A. Well, she's regular T-2 type tanker, was built by the Government during the World War II. Her over-all length is five hundred twenty-three and a half feet. She is some ten thousand; little better than ten thousand tons, gross tonnage.

Q. Were you master of the Washington on the night of November 13-14, when she had the collision with the U.S.S. Ruchamkin? A. I was.

Q. At that time was the Washington light or loaded? A. She was loaded.

Q. What port had she left before the collision? A. We sailed from Atreco; that is a little oil terminal, belonging to the Atlantic Refining Company on the lower part of the Neches River. We sailed from Atreco about noon on the 9th of November, 1952.

* * *

[663] Q. What watch does the Second Mate, or did the Second Mate stand at the time of this collision? A. He's standing the twelve to four watch.

Q. Who stood the eight to twelve watch? A. Mr. Williams.

Q. On the night of this collision were you up and

Q. Where were you? A. I was asleep.

Q. Do you recall now what time you turned in? A. About ten-thirty P. M. The evening before the collision.

Q. What did you do before you turned in, Captain? A. I wrote up the transitory night orders.

Q. I show you a book and a loose page. Will you look at that and tell me if you know what they are and describe them for us and tell us if you know who prepared them. A. This looks—pages standing order that I prepared myself which were in effect on the Washington at the time of the collision. These entries in this book were prepared by myself, the transitory night orders. The Deck Officer—

Q. Was it the practice on the Washington for the officers to sign these night orders? A. Yes, sir.

* * *

[673] *Cross-examination by Mr. McGovern:*

Q. Captain, you sailed during the war? A. Yes, sir.

Q. Sailing in convoy? A. About half of the war I did convoy.

Q. Now I am looking at your night order book, and I am looking at the standing orders. I want to call your attention—you have Order One, Obey all rules of the road, having an especial regard for the general prudential rule and the precautionary rule. Was that a standing order of your ship? A. Yes, sir; it was.

Q. Two. Give all vessels a wide birth. Now what's that mean to a layman? A. That merely is a caution to safe navigation.

Q. Was that a standing rule of your ship? A. Yes, sir.

Q. Three. Do not hesitate to alter or reverse course to avoid immediate danger. Was that a standing rule of your ship? A. Yes, sir.

Q. Four. Do not hesitate to call me at any time you [674] are in doubt. Was that a standing rule of your ship?

Q. Was it actually complied with in your ship? A. As far as I know. If I wasn't called I would never know if the man was in doubt.

Q. No, but were there occasions on which you were in fact called? A. Yes, sir. Oh, yes, sir; that's right.

Q. It's not just a paper rule. It was a real rule? A. No, was a real rule.

Q. Five. Check all courses and feel free to make use of all facilities for determining the vessel's position in maintaining safety. Let me know when courses given or action taken does not seem proper or would seem to stand the vessel in danger. A. That's right.

Q. Six. When visibility becomes poor start radar, reduce speed and call me. A. That's correct.

Q. Was that complied with in fact? A. Yes, sir.

Q. Seven. Check compasses frequently. Does that comply? A. Yes, sir.

* * *

[688] Q. Now were your mates permitted to smoke on the open bridge? A. No, sir.

Q. Were your mates— A. Wasn't their practice.

Q. Were your mates permitted to smoke in the wheelhouse? A. Yes, sir.

Q. Were the doors of the open bridge closed or were the doors to the open bridge open? A. They were open that night.

Q. Well, I am interested in what the smoking regulations are. A. Well, they—cool weather there they may close the weather door occasionally.

Q. What kind of petroleum products were you carrying—you can keep that—on the night of this collision? A. Well, in our forward group of tanks we had Diesel, and in the after group there we had what I learned later they designated as premium, was a Cities Service product we had loaded in Lake Charles, high-test gas.

Q. You were an inflammable ship then in the after part? A. Yes, sir.

Q. Now let us get back to the smoking on the ship with high-test gas. Did Mr. Riche smoke? A. Yes, sir; he smokes.

* * *

[695] Q. What did he tell you? [696] A. Well, he concurred with my opinion about it.

Q. Now you next arrived off the Delaware Bay? A. That's correct.

Q. Now did anybody come aboard from the company? A. Yes, sir.

Q. Who came aboard from the company? A. Captain Small.

Q. What is his position with the company? A. He is some sort of a port captain, assistant port captain, I believe he is.

Q. Where did he come aboard from? A. He came aboard with the pilot, when the pilot boarded us.

Q. That was off the lightship. Overfalls Lightship? A. Right off the pilot station there.

Q. Did anybody else come aboard before you went up the Delaware River? A. Yes, sir.

Q. Who else? A. Mr. Brush.

Q. Mr. Brush, sitting over here? A. That's right.

Q. Anybody else come aboard with Mr. Brush? A. The pilot came aboard, and I believe, I don't know if Mr. Wood came aboard with Mr. Brush or came aboard at [697] Philadelphia. I don't remember that.

Q. Mr. Wood is Mr. Brush's assistant here? A. That's right.

Q. Now did the Marine Superintendent come aboard? A. No, sir; he didn't.

Q. Now what time was it that you prepared this marine casualty report?

John D. Cain—for Texas Company—Cross

The Clerk: Government's for identification 31 and 32.

Mr. McGovern: Just back pages of the same thing. 31.

The Clerk: 31.

By Mr. McGovern:

Q. Now, Captain, I show you this Coast Guard accident report which is on Form 2692, Government's 31. I ask you if that is your signature? A. That's right.

Q. Now I call your attention to the fact that this is dated up here the 15th of November, 1952. A. That's right.

Q. Was that the date you prepared it? A. Yes, sir. Commander Kelly of the Coast Guard was there when we filled this out and he took it with him.

Q. Commander Kelly from Philadelphia? A. I believe he is Commander Kelly.

[698] Q. Where was your ship when you filled out that form? A. We were in Philadelphia.

Q. You were tied up at the dock? A. At the Atlantic dock.

Q. Mr. Brush and Mr. Wood had been on board by that time? A. Yes, sir.

Q. I call your attention to the statement made down here where it says, Because of the casualty and it says, USN navigating without lights. A. We—that is my statement all right, but the information I got was headlines in the paper that somebody had handed me that morning when we arrived, and I would assume that that release was given by the Navy to the Press, probably public relations. Maybe someday I will learn not to rely on the things I see in the papers.

Q. Well now, Captain, I understand that you have been questioned about this press statement before, and I don't

want to unnecessarily press you on it, but my concern is merely that this statement that the Navy was running without lights was made by you in a report. A. I understand that that was erroneous on my part, but I was led to believe that through what I saw in the papers there, and I assumed that it was released from the Navy.

Q. But at that time you had already talked to Mr. Brush [699] and Mr. Wood? A. Yes, sir.

* * *

Q. Now the next question is, Where did you receive the information that this Navy flotilla was traveling without [700] lights? Your answer, The first. I actually knew for certain what had happened, I was in the dark as much as a lot of other people who wondered what happened there, but had they been carrying lights, we would have seen them; they wouldn't have enveloped us that quickly without any forewarning to us. Now, Captain, is that a correct report of what you said at the time? A. Yes, it is.

Mr. McGovern: Your Honor, I understand that —I don't in any way want to question the Court's ruling and I'm not here to reargue a point that has been decided against me on discovery, but I am concerned lest when I get to another court, contention is made that at this point I should have demanded the Captain's statement to Mr. Brush and made some exceptions to it. Now I don't want to disturb the surroundings in any way—

The Court: Well, it is in the record that you did ask for it and that your objection runs through the case.

Mr. McGovern: I just wanted to make sure. Mr. Brush, is that agreeable with you?

Mr. Brush: Sure.

John D. Cain—for Texas Company—Cross

Mr. McGovern: I see no sense in making useless demands, but I have been other places where [701] they say I should have done it.

* * *

[714] *By Mr. O'Connell:*

Q. Captain, from time to time, were you, you were out at sea, did you, do you receive radio messages from the home office of the Company, or one of the branch offices as to the change in position or a—not a change in position, a change in orders or anything relevant to the navigation of the ship; where you're going, charter and so forth? A. We receive orders from, diverting orders and so forth.

Q. You get them by radio? A. By radio.

Q. Is there any particular time of the day when you listen in on the home office or they send messages to you? A. No, they filed them there in the office. I am not sure what channels they go through to get to us.

[715] Q. Is there a definite time of the day when you receive them? A. No. There is no definite time.

Q. To your knowledge, Captain, did you receive any radio messages from the company with regard to a notice of any naval maneuvers being in the vicinity of Virginia Capes? A. Not to my knowledge; no.

Q. It would have been possible for you to receive it, though, by radio? A. It would have been possible. Yes.

Q. Now, Captain, you have stated that you had a properly manned ship; is that correct? A. Yes, sir.

Q. Did you yourself ascertain first of all if the mates on your watch could read signal lights? A. No, sir; you didn't ascertain that.

Q. You didn't find out of your own knowledge whether they could read signal lights? A. No, I didn't.

Q. So you didn't know of your own knowledge whether they actually, they could read a blinking signal? A. No,

Leonel J. Foitier—for Texas Company—Direct

Q. Did you of your knowledge find out if the mates on your watch could properly read a radar screen? A. I believe I had.

* * *

[722] Thereupon, LEONEL J. FOITIER was called as a witness by counsel on behalf of the Texas Company and, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. Crenshaw:

Q. Mr. Foitier, what is your occupation? A. I am a radio operator for the Texas Company.

[723] Q. And were you on the S.S. Washington on the night of November 13-14? A. Yes, sir.

Q. 1952. And in what capacity were you serving aboard the Washington then, Mr. Foitier? A. Radió operator.

Q. And are you duly licensed to perform such a function? A. Yes, sir.

Q. Do you recall when your licénse was last issued or renewed? A. My last renewal was in October of this year. Last year, I mean.

Q. Prior to that do you have any recollection as to that, sir? A. No, sir; but the license are issued for five years.

Q. And there was an outstanding license issued to you at the time of the collision? A. No, sir; I am sorry.

Q. There was a license issued to you which was effective as of the time of the collision; you were actually licensed at that time? A. Oh, yes, sir. Yes, sir.

Q. Now, Mr. Foitier, how many hours a day did you stand watch, or are you on duty in connection with your radio [724] operator's work on the merchantman? A. Eight hours. Sometimes a little more, but never less than eight.

Q. Now that is eight out of the total twenty-four? A. Yes, sir.

Leonel J. Foitier—for Texas Company—Cross

Q. Now were you standing those watches, the eight-hour period on the trip from Atreco to Philadelphia in which this collision occurred? A. Yes, sir.

Q. Now what stations or frequency do you guard on that watch? A. Well, we got five hundred, of course, and all the commercial stations. We listen for messages from the company New York Office, Port Arthur Office or any branch office that may have occasion to send company messages to the ship, and that is all the commercial stations on the East Coast and Gulf Coast too.

Q. Now do you tune in especially for messages such as the weather forecast or the Hydrographic messages, Hydro-Lant's and things like that? A. I tune in especial commercial stations for the weather.

Q. Does that come out at a certain time every day? A. Yes, sir; it comes out ten-thirty in the morning.

* * * *

Cross-examination by Mr. McGovern:

[729] Q. Did you speak to Mr. Brush, or Mr. Wood before you testified in Philadelphia? [730] A. I cannot recall, really, if I did or not. I might have, but I don't remember.

Q. Well, now, did you testify at Philadelphia—this is Question 20. A. Yes, sir; I did.

Q. Did you have any orders from the master of the Washington to listen for Hydrographic or Notice to Mariners broadcast? Do you remember that question? A. No, I don't remember the question

Q. Well let me show it to you and show you your answer which was; No, sir, and ask you whether that correctly reports what you testified at that time. A. It is No, sir, and the answer would have been No, sir, anyhow. I didn't know what you meant.

Q. Yes, sir. Now I call your attention to Question 47 which was, When was the last Hydrographic information received by you, and your answer at that time is—is that

still your answer? A. I don't think I received—I might qualify that. I am not sure. I don't believe I received one. I might have about something, maybe St. Johns River, some inlet, but I don't think I did.

Q. Now, Mr. Foitier, you talked about company message. Was there any schedule on which the company would send messages [731] to Texas? A. No, sir; they might come in any time.

[750] Thereupon, OLIVER FRANCIS RICHE was called as a witness by counsel on behalf of the Texas Company and, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. Brash:

Q. Mr. Riche, how old are you? [751] A. Forty-eight years old, sir.

Q. Where do you reside? A. 6250 Housy Street, Groves, Texas.

Q. Where were you born? A. I was born in the state of Louisiana, December 11th, 1907.

Q. What is your occupation? A. I am at the present time Chief Mate on the S.S. Alabama for the Texas Company.

Q. Do you have a license of any kind? A. I have a Master of Oceans.

Q. Unlimited? A. Unlimited. Yes, sir.

Q. How long have you had it? A. I am on my fifteenth year, sir.

Q. How long have you been going to sea? A. Since sometime in '28, 1928.

Q. Now in the interval between '28 and the present time what has been your sea experience? Will you start from the beginning and just give us a general outline of

where you have sailed, what you have done. A. Well, I worked on river boats, docking and undocking ships in 1928 and October the 10th, 1929, I started on deep sea vessels with the Texas Company, and I sailed at various ports throughout Central America, and all parts of [752] the world, and on this American Coast.

* * *

[753] Q. During that period what was your position on the Washington? A. Second officer.

Q. As second officer what watch did you have? A. I had out at sea the twelve to four watch and in port sometimes I'd stand somebody else's watch with mine. My regular watch was the twelve-four watch, though.

Q. That is the regular second mate's watch? A. Yes, sir; twelve to four watch.

Q. Do you remember what port the Washington sailed from previous to the collision? A. Yes, sir. I think it's small village, town, Atreco, close to Port Arthur, between Port Arthur and Beaumont, at the end of the Neches River.

Q. When she sailed was she light or loaded? A. We were loaded, sir.

Q. What did she have as cargo? A. We had a mixed cargo of, if I'm not mistaken, it was kerosene and premium gasoline, high-test gasoline.

Q. Do you remember where she was bound? A. Philadelphia, Pennsylvania. Atlantic Refining.

Q. In your sea experience previous to the collision had you made that trip up and down the Coast towards Philadelphia before? [754] A. Yes, sir; several times.

Q. Will you describe in a general way where the Washington went after she left Atreco? What course she followed, approximately, up along the Coast? A. Well, we took departure at Sabine Bar to what is known as Sabine approach buoy and from thence towards Tortugas Light-

house, approximately eleven or twelve miles off. Thence around the Florida keys to Juniper Inlet Lighthouse. Thence from Juniper Inlet Lighthouse, we followed the strongest part of the Gulfstream to approximately eight miles abeam of Diamond Shoals Light Vessel. Thence from Diamond Shoals Light Vessel to a target buoy some miles north of Diamond Shoals. Thence from that buoy to the mouth of the Delaware River.

Q. When you made this trip, previous to this occasion toward Philadelphia, did you follow substantially the same course or a similar course? A. Approximately the same course, sir.

Q. In your trips up and down the Coast following that course have you seen other merchant vessels that are in these areas making the same or following the same course? A. Yes, sir; I have.

Q. Now when did you go on watch on the night of November 13-14, 1952? A. At twelve o'clock, midnight.

[755] Q. And did you relieve another officer of the Washington? A. I did.

Q. What was his name? A. If I remember correctly, I don't remember his initials, but his last name was Mr. Williams.

Q. What was the weather like when you went on watch? A. Well, it was a very dark night and no moon and a calm sea with a light breeze.

Q. When you went on watch, what did you do? Will you tell us in a general way exactly what you have done, as you recall? A. Yes, sir; I went in the chart room. I read the night orders and signed them. I assumed my position by a dead reckoning on the chart, and I figured my position by dead reckoning from the time that I was, that I took over the watch to the four o'clock in the morning, to see if I would have been in sight of any navigational lights. I found everything was well in order and I relieved the Third Mate.

Oliver Francis Riche—for Texas Company—Direct

Q. Do you remember what course the Washington was on as you took over the watch? A. Yes, sir; the course was zero zero nine gyro.

Q. Were you steering by gyro? A. Yes, sir.

[756] Q. Did gyro have any error in it? A. It did, sir.

Q. How much of an error? A. It had approximately a degree and a half west.

Q. At what speed was the Washington traveling? A. We were making approximately fourteen and a half knots.

Q. Was the Washington exhibiting any lights? A. Yes, sir; we were exhibiting the actual complement of running lights, the side lights, the masthead lights, the range light and stern light.

Q. Did you check those lights sometime, either when you went on watch or after you went on watch, to see if they were burning? A. Yes, I did.

Q. Were they burning? A. Yes, sir.

Q. Now first let us take the period from midnight until one o'clock. Did anything occur during that hour after you went on watch? A. Well, there was ships on both sides of me, lights, white lights. I could see both sides of me, and nothing unusual occurred.

Q. As you took over the watch at midnight did you have any conversation with the other mate about lights that were [757] visible? Did he report any to you? A. Yes, sir; he did. He told me there were lights on the—he asked me could I see those lights on the starboard side and could I see those lights on the port side. I said, "Yes, sir; I see very well."

Q. And then you took over? A. And then I took over the watch; yes, sir.

Q. Who else was on watch, on the deck watch with you at that time? A. Well, in the wheelhouse there was Mr. Caldwell, the Quartermaster.

Q. Where was the wheel with respect to the forward part or forward bulkhead of the pilothouse? A. In the center or nearly so of the wheelhouse.

Q. Was it close to the forward bulkhead or back aft of it? A. It was a little bit closer to the forward bulkhead, probably.

Q. How large an area, roughly? Can you give us some dimensions of this pilothouse on the Washington? A. Well, sir, I think I could. The ship is approximately sixty feet wide, and the wheelhouse takes about one-third of that in width and about—

Q. Were there any open wings on the bridge? A. Yes, there's about one-third of the width on the [758] starboard side and one-third of the width on the port side.

Q. What equipment for navigational purposes did you have in the wheelhouse besides the wheel? A. Well, sir, we have a rudder indicator, a revolution indicator, maneuvering telegraph, a docking telegraph, a radar.

Q. Was the radar turned on when you took over the watch? A. Yes, sir; it was.

Q. By the way, did you have any, or did you have at this time any training in radar? A. Yes, sir; I have.

Q. What training did you have at that time? A. I went to the Sperry Gyro School in New Orleans, sir.

Q. And how much of a course was that? A. I took a week's training course which they issued me a certificate stating so.

Q. What does that certificate indicate? A. It indicates that I have been through this five days of radar training in the use of operations and minor tuning, and so forth and so on.

Q. Now on this night as you proceeded along, was there anyone stationed as lookout? A. Yes, sir; there was.

Q. Can you tell us who that was and how long he stood [759] lookout? A. There were two lookouts. There was, Mr. Smith was on standby lookout, and Mr. Upton.

Q. Who was on lookout from midnight to one o'clock? A. Midnight to one o'clock was—let's see—

Q. Do you remember who was lookout at the time of the collision? A. Yes, sir. Mr. Upton was on lookout at the time of the collision, so that would put Mr. Smith on lookout from twelve to one because he relieves the wheel at two o'clock.

Q. Now you have mentioned Mr. Caldwell, Mr. Smith, and Mr. Upton. Were they the only three seamen on watch during this period of midnight until four o'clock? A. On deck; yes, sir.

Q. On deck. That's what I mean. Will you describe in a general way what the routine of their watches were at this time? A. Yes, sir. Mr. Smith went on lookout from twelve to one. Then Mr. Upton would relieve him and Mr. Smith would go on a standby lookout aft. And at two o'clock he relieves Mr. Caldwell, the Quartermaster, for a rest period of thirty minutes.

Q. Now is that what occurred on this night? A. Yes, sir.

* * *

[761] Q. That occurred about one-fifteen you said? A. Approximately one-fifteen, but I don't know what time it was because I didn't look at the clock.

Q. Now will you continue on from that point and tell us what you observed and what was done? What you saw? A. Well, we kept going on after I got back on the course zero zero nine gyro. We kept going along and I kept watching those lights going on my starboard side, going slowly astern of me, like I was passing them, or like it could have been ships that I was—slower than I was.

Q. What color were these lights? A. They were all white lights on my starboard hand and port hand.

Q. Did you do anything to ascertain how close they were? A. Yes, sir; at intervals walking across from one side of the bridge to the other like we generally do standing watch, I would go and glance in the radar.

[762] Q. And the radar was turned on, was it not? A. Yes, sir; it was in operation.

Q. What scale was your scope on? A. Well, we usually keep a fifteen-mile scale and that's what it was on that night, fifteen-mile scale.

Q. Is that just a blank scope on a fifteen-mile scale or does it have any writing? A. No, sir; it's a graduated scope on what we call in the radar language permanent markers. The first circle is five. The second is ten. The third is fifteen miles. They are permanent markers. Then we have a variable marker.

Q. When you looked at the radar on these various occasions, did you ascertain approximately where these lights were? A. Yes, sir. Looking at the lights and then glancing in the radar would tell me that they were passing, going to my starboard and aft of me. And that they were well off on my starboard side.

Q. Well now, to those of us who weren't there, tell us what you mean by well off. A. Well, I would say that anywhere between five and a half to six; some were as far as, off as fourteen miles. Never inside of five and a half miles or six miles.

Q. Then as you continued on, what occurred? You are now up to one-fifteen or one-thirty or thereabouts, as I [763] A. Well, we went on course zero zero nine, and I sighted almost right dead ahead of me two red lights about the same plane, but the right, or starboard hand red light was further off, going across my bow from starboard to port and moving very fast.

Q. Now did these two red lights bear from the Washington— A. Well, they were almost dead ahead on my starboard hand, a slight bit on the starboard side, coming from, moving in from my starboard to the port.

Q. What else did you observe about these red lights? A. Well, it seemed to me that they were close. Well close of me and going across my bow. They were bright.

Q. Were they going slow, or fast, or what? A. The lights were moving very fast through this dark.

Q. What else did you observe then? A. Well, I—

Q. What did you do? A. I went, I was steering course zero zero nine at the time I saw the two red lights and I assumed these were very close to—I went right ten or fourteen, about fourteen degrees, which would be about twenty, zero twenty-three.

Q. And then what did you do? A. I asked the Quartermaster, I says, "What are you on?" And he says, "Zero twenty-three." I says, "All right. Steady." [764] And I kept going until those two red lights that had crossed my bow were well on my port hand.

Q. Then what did you do next? A. I ordered him back on course zero zero nine.

Q. And then what happened? A. Well, about that time, when I ordered him back to zero zero nine, I saw a third red light.

Q. Now where did you see this third red light? A. This third red light was very close to my starboard hand, and coming across from my starboard bow to my port bow at a terrific speed.

Q. Are you able to tell us where that red light bore from you when you first sighted it? A. Well, it happened so fast and so close I could estimate it.

Q. Well, now, I hand you a pad with two ship models. Suppose you allow the larger one to represent the Washington and the smaller one to represent the red lights on this third vessel. Would you please draw, placing those models, draw the bearing or position of that third red light when you sighted it? A. Yes, sir; if it's all right if I stand up.

Q. I guess so.

The Court: Suppose we take a short recess while he draws it.

[765] (After recess.)

(The witness resumed the witness stand.)

By Mr. Brush:

Q. Mr. Riche, at the recess I asked you to draw the ship models, the angle at which you saw this red light, third red light, when you first saw it. Have you done that? A. Yes, sir; I have.

Q. Would you please sign your name at the bottom of that. A. (Signed.)

Q. Now I believe you said, or perhaps my recollection is faulty about it, but tell me when you saw this red light, how was it traveling? What was it doing? A. It was moving through the water very fast, sir. From my starboard to my port.

Mr. Brush: I will offer this.

Mr. McGovern: No objection.

The Court: Let it be admitted.

The Clerk: Texas Company No. 15.

(The Clerk so marked the drawing as Texas Defendant's Exhibit No. 15 in evidence.)

By Mr. Brush:

Q. What did you see and what happened next? A. Well, the minute I saw this third red light, I was going from twenty-three to zero zero nine, when I saw it, and [766] when I saw that red light, I ordered the wheel hard left immediately and run to the port side of the bridge to see if by coming hard left, see if my vessel would clear the

two red lights that had precedingly crossed my bow, and I watched that carefully, and I ordered hard left again and in the meantime also blew two blasts of the whistle followed by several short blasts.

Q. Then what happened? A. Then the accident occurred, sir.

Q. Can you estimate the interval of time between the moment when you first spotted this third red light and the time the vessels came together in the collision? A. Well, sir, that would be very, very hard to give you the right, the exact time, but I would say in a matter of about thirty seconds.

Q. Did you observe the time when the vessels came together? Are you able to tell us the time? A. No, sir. I did not observe the time because it was dark in the wheelhouse and you can't see the clock unless you put a light on.

Q. I see. Did you, after the collision, determine the time? A. Yes, sir.

Q. And how did you do that? A. Well, after the collision I called the engine room, [767] and I asked them what time had they logged the full speed astern bell when I went full speed astern, and the officer on watch in the engine room told me zero two-thirteen.

Q. And what did that indicate to you? A. That indicated to me that the accident happened a matter of seconds before that or close to that time.

Q. Are you able to estimate or tell us exactly about when you saw these two red lights that you first saw? Are you able to fix that time? A. Yes, sir; pretty close.

Q. How do you fix it? Did you look at the clock? A. No, sir; in the wheelhouse we have a ship's bell clock. It rings every half hour.

Q. Yes, sir. A. And it had struck four bells which indicated two o'clock, and it was after that time that I saw those two red lights, those first two red lights, which would

be between zero two zero two, or maybe a little later. It could have been zero zero two zero, five minutes. Zero two zero five.

Q. Let us go back a little bit. You testified some time ago about the wheel watch changing. Do you remember now when that change occurred? A. Very close to two o'clock, before.

Q. What was the change? I think you said that Mr. Caldwell was at the wheel? [768] A. Mr. Caldwell's what we call our regular Quartermaster, he was relieved by Mr. Smith.

Q. What time? A. A little before two o'clock.

Q. And was Smith at the wheel when four bells or two o'clock struck? A. Yes, sir; he was.

Q. And you think it was a little after that that you first sighted these two red lights? A. Two red lights; yes, sir.

Q. Now when the collision occurred, when two vessels came together, what did you see and what did you do? A. Well, sir, just before it, when I saw this vessel coming across, I looked over to my right a little bit and I saw some lights going around my stern, and then I run to the port wing of the bridge to see that I had cleared those other two ships, or two lights that had just crossed my bow before that, and I blowed the whistle and at the same time I also said, "Hard left," the second time, and I blowed the whistle. The collision occurred. And I run from the whistle on the port wing of the bridge to the maneuvering telegraph in the wheelhouse on the starboard side and I rang full speed astern.

Q. When did you ring full speed astern with respect to the time that the vessels came together? A. It was after the vessel had made contact that I rang [769] full speed astern.

Q. How long after? A. Well, it was very shortly after because the only—about, I would say eight, or about a dozen steps from the whistle to the telegraph, and I ran there.

Q. After you did that what occurred? A. Well, sir, the Captain came on the bridge by then.

Q. Did you have a conversation with the Captain? A. He asked me what happened and I told him that this fellow hit me, and I says, The wheel is hard left and the ship is full astern.

Q. And then what did you do thereafter? A. I just took my station at the telegraph and abided under his orders.

Q. Did the Washington remain in contact with this other vessel for any length of time? A. For a short period of time; yes, sir.

Q. What happened? A. Well, somebody on the Ruchamkin kept hollering, back away, back away.

Q. Did you back away? A. Yes, we—we were backing right after the collision. We stopped awhile. Then we backed again. Actually, we backed away from him, clear of him. The Captain asked him would he sink if we backed away. We didn't [770] get any answer. He asked him the second time, Would he sink if he backed away, and he, nobody answered. Then he asked him, Do you have medical assistance aboard? No answer. So when we got clear and dead in the water, we just stood by and eventually a Navy officer with a crew came aboard and I was in the wheel house at the time, and he asked a question to me. I don't recall the question. I says, "There is the Captain over there. If you have any questions, ask him."

He went over there and asked the Captain something. I couldn't hear what they were talking about because I was watching on the outside there, see that everything was all right as best as I could, and eventually the Navy officer got it, his information, he so desired, and I went with him back to the starboard side of the ship to the ladder and assisted him back on his vessel, and then reported back to the bridge.

* * *

Oliver Francis Riche—for Texas Company—Cross

Cross-examination by Mr. McGovern:

[802] Q. Would it be fair to say that your entire sea-going [803] career has been with the Texas Company? A. With the exception of a few months in 1928 on the tugboats in the Mississippi River.

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[805] Q. Where is Groves, Texas, with respect to Port Arthur? A. It is approximately on the border of the edge of the city limits of Port Arthur.

Q. Port Arthur is the Texas Company port? A. Sir?

Q. Port Arthur is the Texas Company port, one of the regular ports from which the Texas Company tankers—A. Yes, sir.

Q. Now let me get back to the night of the collision, of what was your health on the night of the collision? A. What was my what, sir?

Q. What was the state of your health on the night of the collision? A. Well, there was nothing wrong with me that I know of.

Q. Now this is before the Captain gave you the phenobarbital. A. Not anything that I knew of.

Q. Do you remember testifying before the Coast Guard? A. Yes, sir; I sure do.

Q. Do you remember Coast Guard asked you this question? This is two two one—At the time you made these entries in the rough deck log, would you say you were fairly calm and collective? Answer, No, I didn't get calm and collective until quite a bit after I had a sedative. I was nauseated a [806] little bit and a bad cold. Is that correct? A. Well, to a certain extent it is, but I wasn't sick. I had a slight cold and after such an accident would happen to a man, I think I would be a little upset.

Q. Now I am interested in what your bad cold was like before the accident. A. My bad cold? Approximately like I got now. I got a cold now.

Q. When did you become nauseated? A. After the collision, upset the—upsetted my nervous system and due to that which is connected with the alimentary canal of my body, that it upset that also.

Q. Now did you see the place where the troops had been when you ship pulled away? A. I didn't know there was any such thing on the ship at the time.

Q. Then the reason for your nausea was then not the sight of blood? A. No, sir; I did not leave the bridge, sir.

Q. What was the reason for your nausea, if you know? A. I just told you, was my nervous system, my stomach was nervous after the collision, and I was a little nauseated afterwards, but I never did get really sick from it.

* * *

[808] Q. You're auticipating me, sir. What was closed about the portholes? A. The portholes are clear glasses and they were merely closed, dogged down like all clear glass portholes are fastened with dogs.

Q. Now were they dogged down through the entire period of your watch? A. I could say that they all were dogged down. I would say that they were down.

Q. They were down during— A. That's right.

Q. Now were there a thick, glass porthole coverings that they customarily have on ships? A. Sir?

Q. They were thick, glass portholes covers A. Well, they were ordinary regulation, according to Coast Guard Regulations.

Q. Well, now, I would like to have you compare them with, say, the window glass in these windows. A. I don't know that window glass would pass the Coast [809] Guard Regulation, sir. I don't know.

Q. We are merely interested in finding out how thick the glass was. A. Well, sir, the Coast Guard said it was sufficient for seaworthy, and, therefore, when the Texas Company accepted it as such and consider it that—I don't know the thickness of the glass.

Q. Now let me get a further item in here, and that is, where was your chart room? A. The chart room is adjoining the pilothouse on the same level.

Q. Now where is the chart room with respect to the forward bulkhead, the bulkhead which had these three closed portholes in it? A. Well, the chart room would be abaft of that, sir, adjoining the after part of the wheelhouse.

Q. When you went on watch, did you go in the chart room? A. I certainly did.

Q. What did you do when you went in the chart room, when you first went on watch? A. Before the time that I was to go on watch, I walked into the chart room, I read the night orders, signed them, and I looked in the logbook to determine the last known position of the ship and from that I figured dead reckoning position where the vessel would be at twelve o'clock, or it would be at [810] one, two, three and four o'clock respectively.

Q. If you maintained your course and speed? A. If I maintained that course and speed; yes, sir.

Q. Was the other mate that you were relieving, were you, when you— A. Unless he was keeping a lookout while I was doing that.

Q. Now did you ever go back in the chart room again? A. I went through the chart room a number of times.

Q. Well, now, tell us how many times you went in the chart room between the time you first took over the watch and the time of the collision. A. Well, it is customary that we check the magnetic compass with the master gyrocompass, and also the gyro repeating compass, which is in the wheelhouse and the master gyrocompass is located in the after part of the chart room, after bulkhead, and I went in there approximately three or four times before the collision, just glanced at the compass and asked the quartermaster that was steering, "What are you on?" And he'd

holler out and I'd check the heading on the master gyro with the repeater gyro in the wheelhouse and also in the meantime he would glance in the magnetic compass to check the magnetic compass with the gyro.

* * *

[814] Q. Now on this bridge you have an open bridge on either side; is that correct. A. Wing bridge as we call it.

Q. Wing bridge? A. Yes, sir.

Q. All right. Now getting back to your location, do you have a little table or did you have a little table near the starboard porthole? A. Yes, sir; we did.

Q. What did you keep on that little table? A. Well, we used that table going in port for a table to write out the bell book and necessary papers. Sometimes the Captain used it to sign papers and we also, when we are, have any kind of use for the table, we use it to set something on it.

Q. Now, was this a table by a porthole which was closed? A. Yes, sir; it was below the starboard porthole.

Q. Now were you smoking on the bridge during the watch? A. No, sir.

Q. Which preceded— A. No, sir.

Q. You are sure of that now? A. By the bridge, sir, I assume you mean the outside [815] bridge, and it's not— it's not our habit of smoking on the outside bridge on an open bridge on a tanker, sir.

Q. You wouldn't have lived this long if you had, would you? A. That's right.

Q. Now did you smoke inside the wheelhouse during this watch? A. Yes, sir; that is permitted to smoke in the wheelhouse, in your living quarters, in the recreation rooms and certain designated places about the ship.

Q. Do you smoke quite a bit? A. Well, I would say I smoke average.

Q. Well, now, how many cigarettes did you smoke? A. I don't know, sir, how many I smoked. I didn't count them. I just smoke when I want to.

Q. Where do you keep the cigarettes? A. Sometimes in my pocket, sometimes on, in the porthole. It all depends.

Q. On this particular night? A. I don't recall, sir. I don't have no special place to keep them.

Q. You remember in the Coast Guard Question 205, you were asked, Can you recall the last time you were on the starboard side looking out the starboard side porthole of the wheelhouse before you moved to the center port of the—

[816] The Court: We cannot hear you.

Mr. McGovern: Before you moved to the center port of the forward bulkhead and thereafter observed these two red lights, the first two, and you answered, Well, I smoke quite a bit and that's where I keep my cigarettes and I generally lit one about every fifteen or twenty minutes and it was within twenty minutes that I'd be in that porthole because I know I had been smoking just a little previous to that. We have a little table there in the porthole where we keep our coffee cup and cigarettes.

The next question, 206, Do you customarily stand there while you smoke and drink your coffee, or do you move around? Answer, I move around with the exception of going outside the wheelhouse. We are not permitted to smoke outside the wheelhouse on account of explosive cargo that we carry.

Did you testify that?

The Witness: Yes, sir; but let me add something to that also. I do not drink coffee but once when

I go on watch and that is before I relieve the officer on watch and, in other words, what I was drinking that coffee and smoking that cigarette you're talking about, I was not on [817] watch. The other officer was still on the bridge and I had not relieved him.

By Mr. McGovern:

Q. And your answer was with respect—

The Court: We cannot hear you.
Mr. McGovern: I am sorry.

By Mr. McGovern:

Q. Mr. Mate, your answer was with respect to cigarettes and the Coast Guard, as you recorded as having said, Well, I smoke quite a bit and that is where I kept my cigarettes and I generally light one about every fifteen or twenty minutes and it was within twenty minutes that I had been in that porthole because I know I had been smoking just a little previous to that. A. Yes, I said that.

Q. That refers to a period in the question, and the question was, Can you recall the last time you were on the starboard side looking out the starboard side porthole of the wheelhouse before you moved to the center port of the forward bulkhead and thereafter observed these two red lights, the first two. A. No.

Q. Now the answer is not correct then? A. I didn't say it wasn't correct. I said no, I can't recall. You asked me could I recall. I said no.

[818] Q. Was Mr. Brush there? A. Mr. Brush?

Q. Yes, when you made this statement. A. I don't know whether he was or not. I don't remember. He might have been. He could have been, but I didn't look for him.

Q. Now did you in fact light a cigarette between the time you took over the watch and the time of the collision? A. I didn't get the question, sir.

Q. Did you—

The Court: Mr. McGovern, none of us can hear you.

By Mr. McGovern:

Q. Did you in fact light a cigarette in the period between the time you took over the watch and the collision? A. I probably lighted cigarettes; but I don't see anything against the law in that.

Q. We are merely asking you for the facts. We are not asking you to draw the conclusion. A. Well, I think I am allowed to smoke whenever I want to.

Q. Where, whereat were you standing when you did your smoking? A. I already told you inside the wheelhouse where we are required to smoke if we wish to smoke.

[819] Q. Now how about that little table in the porthole? Did you keep your cigarettes on the little table in the porthole? A. I already testified that I didn't have no special place to keep my cigarettes.

Q. Now can you tell us today how many cigarettes you smoked between taking over the watch and the time when you made your first change of course at o one one five, according to your testimony yesterday? A. No, I couldn't tell you.

Q. Was it one or more than one? A. I couldn't tell you that either it was more than one.

Q. Well, now, I want to take you on each one of these episodes and I want to take you through each one with respect to what happened before your made a course change and what happened after. Now the first one that I want to take you on is you made a change of course to the left,

or to the port hand and at o one one five, according to your testimony yesterday; is that correct? A. No, sir; that is not correct.

Q. All right. What was your testimony yesterday? A. I said that approximately. I didn't look at the time and I didn't know exact time, between one and one-fifteen. I made a course change to the left.

Q. Oh, it might have been one o'clock, it might have [820] been? A. No, sir; between one and one-fifteen.

Q. Now had the lookout reported the lights of any vessel before you made that course change? A. They reported white lights on both sides at all times all along, sir.

Q. I am only interested in the precise events. I don't want to learn anything except what you were told at this time. A. Well, I am telling you that they reported lights from the time I went on watch, all along the watch, all the lights that appeared to them, but I happened to see those lights way ahead of the time that they saw them because they were on the forecastle and were much lower than I was, and when they reported lights to me, I could see them way ahead of them.

Q. How did they report lights? Did they have a bell system? A. With the bell, sir.

Q. Now that is one bell for lights on the starboard, two bells for lights on the port, and three for lights dead ahead? A. That's right. That's all lights.

Q. Now how did you acknowledge their reports? A. Either by going—I always go outside, if the portholes are closed, and holler out to them, "Very well", or "All right", or sometimes we answer them with the bell on the [821] bridge and some of us answer with a flashlight, just one flash.

Q. When you made this first change of course, Mr. Caldwell was your helmsman? A. I don't understand the question.

Oliver Francis Riche—for Texas Company—Cross

Q. Was Mr. Caldwell your helmsman when you made the first change of course? A. At what time are you referring?

Q. Between one and one-fifteen. A. Yes, sir; he was at the wheel.

Q. Now did you hear two bells from the lookout before you directed that change of course? A. I heard bells, several bells before that, sir. There were ships before that, lights, and ships close together to that light, and he just kept ringing bells as the lights came to him, and I kept answering to him. Yes, sir.

Q. Now please give us the bells in sequence; which bell did he ring first; one bell for ship on the starboard hand, or two bells? A. I already told you that when I went on watch at twelve o'clock there were several lights on my port and starboard side and they kept that way until the collision, and all the bells were sighted and answered that we could see.

Q. Mr. Mate, I am still interested in the bell that you got from the lookout which occurred before you made your [822] first change of course. A. I don't know if that was the light that he saw when he rang that bell.

Q. I want to read you Mr. Caldwell's testimony before the Coast Guard, which is evidence in this case. A. Mr. Caldwell was not on lookout. He was at the wheel.

Q. That's right. He was referring to the events which he heard in the wheelhouse. He was in the same wheelhouse with you? A. That's right.

Q. If he heard something, you would have heard it, you would be, were in the same place where you could have heard it? A. Yes, sir; I always did hear them bells.

Q. Now Question 146, you said you heard the two bells up forward which you assumed to be your lookout giving a report of the ships ahead. Exactly what did those two bells indicate to you?

Answer, That there was objects sighted on the port hand somewhere.

147, Did the mate on watch give any indication of having heard these two bells? Yes, he picked up his glasses and looked to the port.

Now do you remember doing that? A. Yes, sir; I picked up the glass, the binoculars, [823] seven-fifty binoculars, and what he meant by looking through the port, through the port side, through the port wing of the bridge, I observed that light and kept a close watch on it.

Q. That was the light on your port hand? A. Yes, sir; that certain one.

Q. Now— A. It was more than one light on the port hand, but that certain one I was watching closely.

Q. How close was that light on your port hand? A. I don't know, sir.

Q. What color was it? A. When I first sighted it, it was white and then I saw his green light.

Q. Now what did this indicate to you? A. That he was coming across my red port bow.

Q. Could you see his other white light? A. I could see two white lights, his range light and the masthead light and his green light eventually.

Q. Was he opened it, was it— A. I don't understand what you mean.

Q. Was the range opening across your bow or was it closing across your bow? A. The range, he was slightly opened.

Q. How close did that light come to you? A. I did not try to indicate the distance he was. I saw [824] that he wasn't going to give me no right-of-way and time enough that I thought that my experience out there, thought was time enough to prevent a collision, so I went to the left, give him the right-of-way, and when he was well clear to my starboard side, I come back on my course.

Q. Well, now it is that change of course that I am interested in. Was this light which you saw within two miles of you? A. I don't know, sir.

Q. Well, you're customarily used to judging distance at sea, are you not? A. Yes, sir.

Q. Well, is this a matter which was within your professional competence? A. Yes, sir.

Q. Well, could you give us your best professional estimate about how close he came? A. Well, sir, you could see a colored light approximately two to three miles at that time, and a clear night, which was clear, and a dark night, but then there was also other white lights on the port side and the starboard side that I was keeping in mind and watching closely. And that fellow didn't seem to, that certain light didn't seem to want to go astern of me, so I give him the right-of-way to keep clear of him and then from then on, after he was clear of me, I watched the [825] other lights.

Q. Now at that time you were the privileged vessel, were you not? A. Yes, sir; but there is a general prudential rule, in the rules that says to keep clear and prevent all collisions, and that is what I tried to do.

Q. Well, now, how far left did you come when you made your change to left? A. I asked the quartermaster did he see that white light, and he said, "Yes." I says, "Put her on your starboard side of your mast and keep her there."

Q. Now do you know how many degrees he had to change to do that? A. Well, it was approximately, it could have been twenty-five, thirty degrees.

Q. Were you around in the Coast Guard when Caldwell testified? A. Sir?

Q. Were you at the Coast Guard hearing when Caldwell testified? A. I don't remember his testimony.

Q. Well, his testimony had been—.

The Court: We cannot hear you.

Mr. McGovern: I am sorry.

By Mr. McGovern:

[826] Q. His testimony had been, at Question 111, When that change of course to port was ordered, how much of a change in course was made? Answer, Well, honestly I can't answer that definitely, but I don't believe it was much over twenty degrees approximately. I say approximately twenty degrees change, maybe not that much.

Then you were asked some other questions and the Coast Guard asked about the change in lights. They said the lights moved from past the bow on the port side over to the starboard hand, and the question is asked, at 114, And the course was sufficient to bring the lights from about three points on the port bow over to your starboard bow; is that correct? And the answer was, Yes, sir; it was evidently more than a twenty degree change. A. That's correct. It was a change to keep clear of him. I didn't give him no certain degree to change course. I just merely asked him, Did he see that white light? I knew what it was because I had been watching it closely, and I asked, I asked him, Did he see the white lights and he said yes. I says, "Put her on the starboard side of the mast and keep her there." And he did so until I ordered him back on the course. That was way after the ship was well clear on my starboard side.

Q. Now was that a considerable period of time? It was more than five minutes? [827] A. Well, I don't know, sir. I couldn't tell you. I didn't look at any clocks. I just navigated, visual navigation. That is what we call visual navigation, and I didn't notice the time, sir.

Q. Now do you know how long you were on that course? A. No, sir, I don't.

Q. Now Mr. Caldwell testified at 115, And how long after that twenty degree change of course to the left was it before you returned back to your course of nine? And

his answer was, After the change to the left, I believe it must have been, well, maybe ten minutes, but no, I don't remember whether it was twenty degrees or what it was. I mean, I mean, I don't mean to imply that it was twenty degrees definitely. I don't remember.

Now as far as I can understand that answer he says it might have been ten minutes. Now how does that accord with your recollection? A. Well, it could have been ten minutes, but it could have been more or less.

Q. Well now, could it have been fifteen minutes? A. I don't know, sir. I told you I didn't know because I didn't watch the clock. I just give it time enough to clear my ship fairly well to the starboard and I considered that fair enough.

Q. Now do you know what time it was that you steadied [828] on your base course of zero zero nine by ship's gyro? A. No, sir; I don't know. It was some time around, after one-fifteen.

Could I have a drink of water, please?

Q. Surely.

Did you blow a whistle when you had made your change in course? A. Which change do you mean?

Q. This is the change of course to the left twenty degrees or more. A. No, sir; I did not.

Q. Did you wake the Captain when you changed the course twenty degrees left? A. No, sir; it is not compulsory to wake the Captain to do things like that. He's got it in his night orders to keep clear of traffic as well as we could, and if we are in doubt, to call him, and I was not in doubt in my mind at all.

Q. Now at some time that you haven't been able to specify, you returned to your base course? A. I can't hear you, sir.

Q. I am sorry. At some time which you haven't been able to specify, you returned to your base course at zero

zero nine. Now in between that time and the time when you made your next change of course, which was to the right, did you receive any reports from your lookouts? [829] A. Repeat that question, sir.

Mr. McGovern: Would you read it?
(The reporter read the question.)
The Witness: Preceding that I did several times.

By Mr. McGovern:

Q. What reports were they, of lights? A. Ships on the starboard side, sir.

Q. Now did you yourself look at these ships on the starboard side? A. Yes, sir; with my naked eye and with binoculars and also checked in the radar.

Q. That's what I wanted to find out.

Now let us get your first check of the ships on the starboard side which you made with your, whichever you did first, whether you did it with the radar or your naked eye, or the binoculars—what was the first time you checked the ships at the starboard? A. Well, as I recall I have told you that I sighted lights all along my starboard side during that night, and I checked with my eye, either with my glasses, the binoculars, and eventually at times I would glance in the radar to see if anything was coming within a danger zone which I considered five miles.

Q. Now what scale was your radar on? [830] A. It was on a fifteen-mile scale, sir.

Q. Now how many PIPs were showing on your radar? A. I did not count them. There was quite a few, and they were all moving from ahead of me to my right, going astern of me, and there was never inside of five miles or five and a half to six miles, inside of those permanent markers on the radar, and I did not count them, sir.

Oliver Francis Riche—for Texas Company—Cross

Q. Well, now where were you standing when you directed the course change to the right? A. I was standing, that was the second change—I mean the second, not a change of course—it is an alter course.

Q. All right. The second alter course. The first one you altered to the left to let this man who was the burdened vessel by? A. That's right.

Q. Now the next time you changed course to the right? A. That's right.

Q. Now it's that second that I am interested in now. A. Well, I was standing close to the center porthole.

Q. And what did you see through the center porthole? A. Well, I saw two red lights, almost ahead. One appeared very much closer than the other, with the same plane, and the other a little bit more on the right and further away, almost dead ahead.

Q. Was that the first time when you yourself saw these [831] red lights? A. Colored lights; yes, sir, with the exception of that one green light receding there.

Q. You saw this through the glass of the porthole? A. I saw the red lights through the glass of the porthole with the binoculars and with my eyesight too.

Q. Now when was the last time you had been out on the open wing of the bridge before that time? A. Well, sir, I couldn't account for that because I walked clean across the ship, back and forth, while I'm on watch continuously, and I don't very seldom stop to one certain place and stay there. We move about all the time.

Q. But you had not sighted these lights when you were on the open bridge, the colored lights? A. I did not see those two red lights before. I told you I did while I was standing right in the middle of that porthole.

Q. Now what, if anything, did you say to the helmsman at that time? A. I told him to right a little.

Q. Now what did you mean by that, or what did he understand you to mean by that? A. Well, he brought the ship to the right. He asked me, you mean by the compass. I said, I told him to right a little, and he asked me something concerning how many degrees, [832] or so, and I said, "What are you on now?" He did right and then I says, "What are you on now?" He says, "Twenty-three." I says, "Well, that's good enough. Hold 'er there steady as she goes." And I kept asking him, "What are you on now?" because when you're steering a ship by hand, it sways back and forth slightly and I wanted to know what he was on and he kept telling me twenty-three, twenty-three. I said, "Very well."

Q. Now how close did the red lights appear to you to be when you first saw them through the glass porthole? A. They appeared very close.

Q. Within a mile? A. I don't know, sir.

Q. Within a half a mile? A. I don't know, sir.

Q. Within a quarter of a mile? A. I still don't know. I couldn't tell you how close those lights were. They appeared very close.

Q. I am trying for our assistance to find out within two hundred yards. A. Well, sir, the lights was dead ahead and they appeared close to me, being on a dark night when they first popped out like that, they appeared close to me, and I don't know what distance they were away from me.

Q. You did not make any estimates? A. No, sir; I didn't try to. I give them the right-of-way. [833]

Q. Now, did you blow any whistle when you changed course to the right? A. No, sir; I did not. I didn't change course to the right. I altered course to the right.

Q. You altered course? A. That's right.

Q. From zero zero nine to o two three? A. That's what we call visual navigation.

Oliver Francis Riche—for Texas Company—Cross

Q. Did you call the Captain when you made that change of course? A. No, sir; I did not.

Q. What time was it that you made that change? A. Sir?

Q. What time was it you saw these two red lights and made that change? A. Well, I don't know, sir. It wasn't —I can't specify no exact time. I know it was after two o'clock.

Q. You— A. Because four bells struck in the wheelhouse at two o'clock.

Q. How much after two o'clock? A. Well, it could have been a little after two o'clock.

Q. Could it be two minutes after two? A. Well, I think it would be between two and five minutes [834] after two. I don't know the exact time.

Q. Now how long did you remain on that course of o two three by gyro? A. Well, sir, assuming that the accident occurred approximately at zero two-thirteen, I would say anywheres from seven to twelve minutes.

Q. Now did you make any further change of course before the collision? A. I never did change course. I altered courses.

Q. Oh, all right. You make any further alterations of course before the collision? A. Before what?

Q. Before the collision? A. No, sir.

Q. Didn't you change course to the left? A. No, sir; I didn't change course.

Q. Did you alter course to the left? A. Yes, slightly. I started to my left.

Q. When did you alter course to the left? A. When I saw the third red light.

Q. Which was how long before the collision? A. Approximately thirty seconds.

Q. Now where were you standing when you saw the third red light? A. In the same place, in that porthole.

[835] Q. Looking through the glass porthole? A. Yes, sir.

Q. Now where had you spent the intervening time between seeing the first two red lights and the last third red light, which was the light of the vessel with which you collided? A. Well, at the usual place there where you would stand when you're doing visual navigation, right close to the quartermaster where you can observe the different bearings at different angles and also give orders to the wheel.

Q. You stated you stayed in the wheelhouse then? A. Yes, sir.

Q. You did not go out to the wing of the bridge? A. Before the collision?

Q. That's right. A. You mean—what do you mean?

Q. Did your go to the open wing of the bridge in between the time?

The Court: We cannot hear you.

By Mr. McGovern:

Q. Did you go to the open wing of the bridge in between the time that you saw the first two red lights, the one you saw through the glass porthole and the last red light which was the red light just before the collision? A. I don't recall going on the wing of the bridge during that short period. I was standing there taking up, [836] observing the bearings on the lights and giving orders to the quartermaster.

Q. What time was it that you saw the third red light? A. Well, I think it was approximately, it could have been at zero two eleven and a half, or zero two eleven, something like that. I already told you from seven to twelve minutes before the collision.

Oliver Francis Riché—for Texas Company—Cross

Q. Now you saw the first pair of red lights about between two and five minutes after two; is that correct? A. No, sir; I did not see a pair of red lights. I saw two individual lights.

Q. I am sorry. You saw two individual red lights between two and five minutes after two; is that correct? A. Yes, sir.

Q. And then you stayed in the same place or approximately in the same place, and next saw one red light about a minute or less than a minute before the collision? A. Less than a minute before the collision. That's right.

Q. Now during this period of time had you been receiving any reports from your lookouts? A. Yes, sir.

Q. What were the reports which you were receiving from your lookout? A. Reporting bells, lights.

[837] Q. What bells were they? A. There was some for the port and some for the starboard because there was vessels on both sides of us.

Q. I am particularly interested because Mr. Upton's testimony, which is in this case—

The Court: Take a short recess, Mr. Marshal.

(After recess.)

(The witness resumed the witness stand.)

By Mr. McGovern:

Q. Mr. Mate, I am reading from Upton's Coast Guard testimony at Question 405, and the question is, When was the last time before the collision that you had any bell signals indicating ships on your port side, if you had any? And the answer, Well, I'd say something around one-fifteen.

406 Question, That is the last time you recall seeing any ships on your port side or ringing a bell for ships on your port side? Answer, Yes, sir.

Now is that a correct report? A. That could be correct; yes, sir, but I couldn't see them. I could—I was up

higher than he was and I could see some white lights quite a ways off on the port side, sir.

Q. But as far as your lookout was concerned from one-fifteen on, reported only lights on the starboard side? A. I don't know what he saw. I know what I saw, sir.

Q. I am asking what he reported to you. [838] A. I don't remember what he reported. I recall him reporting ships on both sides, more of them on the starboard side.

Q. Now I go back to his testimony, and the question is 286, This ship you say that you saw at about two A. M., about three points off the starboard bow, you gave one bell. This was the same ship, are you certain; that you had again reported a few minutes later? Answer, I reported the same light twice.

Question, That you reported the first about two A. M.? It was something a few minutes before.

Question, A little before two you reported it the first time and that's when she was off your starboard bow? Answer, Yes, sir.

Question, Then a few minutes later you reported the second light, or you reported this same light a second time? Answer, Yes, sir.

Question, Do you remember how many minutes there were in that interval? Answer, I'd say around ten minutes.

Question, And then from the time that you reported a second time about how long was it until you began to ring the bells as fast as you could as she was coming in on you? Answer, Well, it was when I could just see the bow of this ship.

Now did you receive these reports by bell from Mr. Upton, the bow lookout? A. I received bells on the starboard bow by Mr. Upton, [839] but which one he was referring to when he was ringing the bell, I do not know, sir. I could see much more lights than he could on the starboard side, and I do not know which individual light

he was referring to when he kept reporting, he claims, the same lights all the time because there were many white lights on the starboard side, sir.

Q. Well, now, I apparently forgot to ask you a question I should have at a previous date. I am going back to your alteration of course, the one where you went right to o two three. Now did you blow a whistle at that time? A. No, sir; I already answered you that question.

Q. I thought you had too, but people back there didn't hear us, A. Well, I said no.

Q. I am sorry for taking your time. A. I said no, I did not.

Q. Then we go to the third alteration of course which was to your left. Now did you blow a whistle when you changed course to your left, altered course to your left? A. Sir, I was going approximately zero twenty-three when I saw the third red light, before I saw that third red light which was very close on my starboard side when I did see it. I was on course zero zero twenty-three, shortly after I looked on my port bow, and I saw that the two red lights that had passed from my starboard to my port was well clear, I [840] started back. I gave an order to come back on the course and at that moment I saw that third red light popped over real close to my starboard bow at a terrific speed. I said then hard left and I run to the port wing of the bridge. I sounded two blasts of the whistle followed by several short blasts, and hollered the second time, Hard left, and he then told me, "She's hard left." And that's when the collision occurred; sir.

Q. Now, sir, there is only one other matter that I will take your time up with and that is your radar. When was the last time that you looked in the radarscope before the collision with reference to the three points that we have been examining you on? A. Well, I would say shortly before four bells in the wheelhouse, or two o'clock.

Q. Just before two o'clock? A. Shortly before two o'clock.

Q. Now what was the situation as shown in your planned position indicator at that time? A. I didn't understand the question, sir.

Q. What was the situation shown on your scope? You had a P. P. I. scope on your radar? A. Yes, sir; that's right.

Q. What was the situation shown on your P. P. I. scope? A. There was targets way off on the port side and there [841] was several targets well off on the starboard side, all moving towards my stern respectively.

Q. How near was the closest target? A. The closest target was well abaft my beam and it was approximately five and a half to six miles off.

Q. Now how close was the nearest target which was forward of your beam on the starboard side? A. I'd say well over six miles.

Q. Now do you have any explanation of why your radar didn't pick up the Ruchamkin? A. I don't have any explanation; no, sir.

Q. How was your sea return; were you having any? A. Very, very little on fifteen-mile scale because there was no sea.

Q. And there were no ships really close to you to show it on your scope? A. I already stated, sir, that there wasn't anything within five and a half to six miles, was the closest one, sir.

Q. I was only asking that with respect to the sea which is turned up by a nearby vessel. A. Well, I couldn't see any in there; no, sir.

Cross-examination by Mr. O'Connell:

Q. Mr. Riche, at any time prior to the collision did you have any reason to believe that the ships off on your [842] starboard were naval ships? A. No, sir.

Q. You had no knowledge by visual signals or anything like that that the ships over there might be naval ships? A. No, sir. I don't see where anybody could tell a naval ship at nighttime from a merchant ship when they all carry the same lights, or supposed to. I don't know any reason why I should know it, it was a naval ship.

Q. Any time after o two o o, after two o'clock, do you remember whether you received any sort of a signal light, a blinking signal light off to your starboard? A. Yes, sir.

Q. You noticed a blinking signal? A. Yes, sir.

Q. And where did you think that came from? A. I was standing at the moment that I saw that blinking signal light approximately in the middle of the wheelhouse glancing over to my starboard through the starboard porthole well abaft my beam. I saw a blinking light sending a message, AAA, which means attention.

Q. And from what type of a ship did you imagine that came from? A. I don't know, sir. It was very dark. All I could see was the side of the light that was blinking.

Q. You just saw the side of the lights? [843] A. The side of it. It would seem like to me it was pointed in another direction, but I thought they probably meant me so I plugged in my portable key and answered him three or four times and he didn't respond so I took it for granted he was talking to someone else.

Q. Now that portable key, could you just very briefly describe what the setup was, the make-up of it? A. It is an extension cord with a key on it that you can move from one side of the bridge to the other through the wheelhouse.

Q. From one side of the bridge to the other? A. Yes, sir.

Q. How long is that extension cord? A. Well, I would say it is approximately one-third or maybe a little bit more than the width of the ship.

Q. All right. Now when you blinked back were you in the wheelhouse? A. No, sir.

Q. Where were you blinking back; where were you standing? A. I was to the starboard wing of the bridge.

Q. Starboard wing? A. Yes, sir.

Q. Could you see from what, as you stood on the starboard wing, could you see what direction this AAA came from? [844] A. Well, it seemed to me it was coming from abaft my beam from some ship. I don't know which ship it was, or who it was because he never did answer me and I just dismissed it, as he wasn't talking to me. So I didn't pay any more attention to it.

Q. At the time you received this blinking AAA, you thought it was, they were trying to get your attention? A. Well, they could have been; yes, sir.

Q. Right, and you attempted to signal back by this means of this blinker? A. I intended to answer him.

Q. Did you, could you tell the Court where the light, the blinker light was that you— A. The blinker light is situated on a yard arm over the bridge of that certain ship. At that time it was a white light visible all around the horizon.

Q. Did you notice whether this light was working? A. Yes, sir; you could see. It illuminated the ships, the wing of the bridge when I'd press down to the key, when the key would make contact.

Q. You didn't look up? A. No, sir; that was sufficient enough, because it would illuminate the wing of the bridge where I was, sir.

Q. What type of a signal, what was the signal that you gave back? [845] A. I answered with AA.

Q. You gave them AA? A. That's right, several times.

Q. And you didn't get any response to that? A. That's right.

Q. Now how long a time was consumed in this receiving the signal or blinking back? A. Well, I don't know how long he signaled after that because I didn't pay any more attention, but I would say I took approximately fifteen to twenty seconds, something like that. I decided he didn't answer me and I took it for granted he wasn't talking to me. He meant somebody else.

Q. You said the total time was consumed in plugging in the blinker? A. My time, not his, because I didn't pay any more attention to him.

Q. The whole time that you consumed in plugging in the blinker light and going out to the starboard wing? A. Sir, the blinker light was already plugged in it. It was laying right there for me. I just picked it up and walked on the wing of the bridge.

Q. Just fifteen seconds? A. Well, that's a rough estimate. I didn't take any time of it. I don't say it's fifteen seconds.

Q. Well, could it have been two or three minutes? [846] A. No, it couldn't.

Q. It was definitely less than a minute? A. Yes, that's right.

Q. You gave your signal and you waited a short time? A. No, sir; I answered him in the proper manner. Whenever anybody sends attention, which is a de da, I answered him de da. I'd de da again and no answer.

Q. So giving the de da took five seconds? A. No, sir; it just merely takes a little, less than probably a second for one de da, probably one second.

Q. Would you have consumed three seconds in giving the, depressing the key? A. Yes, sir, approximately, maybe.

Q. Then you waited twelve more seconds? A. I waited —no, sir; I waited in between answers to see if he would want to say something. He didn't say anything.

Q. Total time you used up was fifteen seconds? A. I didn't say fifteen.

Q. Approximately? A. Approximately.

Q. Approximately. You waited twelve more seconds before you went back to the wheelhouse? A. Well, sir, I was concerned with the ships ahead. I mean on my port and starboard side and I was watching bearings on them to see, make sure that they were always changing to my [847] right and my left so there would be no danger of them wanting to cross my bow and I didn't take more time than I could afford on account of that.

Q. But that blinking light, you didn't get the impression it was from a Navy ship? A. Certainly not, because we talked to merchant ships all the time.

The Court: What was the bearing of that blinker?

The Witness: It was approximately a point and a half to two points abaft my beam. I glanced when I first saw it, it was through my starboard porthole, your Honor.

The Court: Approximately what was the range of it?

The Witness: Well, I would say maybe it could have been six miles off.

The Court: And did you fix the time?

The Witness: No, sir; I did not, sir, because it's dark in the wheelhouse and I didn't notice any time at all, being he didn't answer, I didn't.

The Court: Was it after you had seen the two red lights dead ahead?

The Witness: No, sir; it was quite a bit [848] previous to that, sir.

Oliver Francis Riche—for Texas Company—Cross

By Mr. O'Connell:

Q. It fixes the time the man at the wheel was Smith, was he not? A. No, sir.

Q. At the time you signaled back the man at the wheel was not Smith? A. No, sir. Absolutely not.

Q. Who was the man? A. Mr. Caldwell was the regular man at the wheel.

Q. Mr. Caldwell; you're sure of that? A. Yes, sir; I am positive.

Q. You are positive it wasn't Smith? A. That's right.

Q. Now, Mr. Riche, when did Mr. Smith come on watch to take over the wheel? A. You mean when did he come up to relieve the quartermaster?

Q. To relieve the quartermaster. A. At two o'clock.

Q. So then he was on from two o'clock until the collision? A. Yes, sir.

Q. Now is Mr. Smith's testimony, has been admitted in evidence and I'm reading from page 33:

[849] Question: Did any vessel appear to signal to you before the collision?

Answer: Yes, there was a vessel trying to signal. Whether it was to us or not I don't know. I think the mate figured it was, maybe.

Question: When did this signal first come in?

Answer: Well, that was a good while before the collision.

Mr. Brush: That was a right good while.

Mr. O'Connell: A right good while, I'm sorry.

Question: About two o'clock?

Answer: It may have been a little after two, two or three minutes after two.

Question: Not as much as five minutes after two?

Answer: I don't think so.

Oliver Francis Riche—for Texas Company—Cross

Question: From what side did this signal appear to come?

Answer: It was on the starboard side.

By Mr. O'Connell:

Q. So then Mr. Smith's testimony is that this signal was made after he was on watch? A. No, sir; not that certain one; no, sir. If he says that, it is wrong.

[850] Q. He is wrong? A. Yes, sir; because he was not at the wheel when that certain signal—he probably, lots of times, when a ship is crossing our stern or way back of us, and they are standing lookout back there, also they are on standby watch, they see somebody flashing a light, they come up and tell us that there's a light flashing back there, and he might have seen a light flashing back there, but he did not see that certain light that I explained to you after two o'clock or anywhere close to two o'clock.

Q. Well, were there two times during the night that you used the blinker key? A. There was—I don't know how many times we used it. We used it after the collision.

Q. No, I am talking about you yourself during the watch before the collision. You came on at twelve and the collision was approximately two-thirteen; is that correct? A. Yes, sir.

Q. During that period of time did you use the blinker key twice? A. I only used it once, the time I just explained.

Q. Just used it once? A. That's right.

Q. Now I will continue reading from Mr. Smith's testimony, page 34.

[851] Question: How do you know he figured that they were trying to signal?

Answer: Because he tried to make contact with them, see.

Question: Tell me about that.

Answer: He used the blinker key for a while.

Question: Where was the blinker key?

Answer: I believe he had a portable key there plugged in that he used.

So it seems that Mr. Smith's testimony is that he was there and he saw you use the blinker key? A. Mr. Smith was there from two o'clock to the time of the collision and we did use the blinker key after two o'clock and after the collision.

Q. So it is now your testimony that— A. I said—

Q. That the time Mr. Smith is talking about was— A. Is a different time than I am talking about altogether.

Q. After the collision? A. That's right.

Q. All right. I will continue reading from page 35.

Question: How long would you say it was between the signaling and the collision?

Answer: How long between the end of the [852] end of the signaling and the collision?

Question: Yes, well, I guess it was about ten minutes. Mr. Smith.

—The answer was, Well, I guess it was about ten minutes.

Question: As much as ten minutes?

Answer: I think so, yes. It wasn't much after two o'clock before I mean—when he first started signaling with him, you know.

So Mr. Smith definitely says that his recollection, it was before the collision? A. Well, my recollection is just like I have explained to you, sir, and I do not know any answer that I could give you to help you out in any way.

Q. So your testimony is that Mr. Smith was wrong? A. No, sir. I did not say that.

Q. Your recollection differs from Mr. Smith's? A. No, sir; I did not say that, either.

Q. Would you just tell me? A. I said that if Mr. Smith is talking about the same light that I was referring to, it was well before two o'clock, and that if he was not talking about the same light that I was, it was at the time after the collision when we did use the blinker key. That's what I said.

Q. But am I correct in stating that Mr. Smith says it [853] was after two o'clock and before the collision, his recollection of it—

The Court: Well, that is what the deposition says.

The Witness: The deposition might say that, but we are not talking about the same light.

By Mr. O'Connell:

Q. Mr. Riche, just briefly, you had a bad cold, I believe, had been brought out while you were on watch? A. No, sir; just about like I got now.

Q. Did you take any kind of a medication for it, aspirin, anything else? A. No, sir; I did not.

Q. After the collision I believe Captain Cain has testified that he gave you a sedative; is that correct? A. Well, it was a long while after the collision.

Q. Well, could you state approximately when it was? A. No, sir. After the collision, after we got under way, I wasn't hungry and I was supposed—it was time for me to eat. I wasn't hungry, so I didn't eat. And then he came by to see how I was doing and how I was getting along, asked me how I was feeling. I said, "I'm feeling fine." Well, he says, "Why don't you lay down and get some sleep?" I says, "I can't sleep right now." Well, he says, "You think if I'd give you an aspirin," he says, "I need one myself. You think [854] if I'd give you an aspirin

that it would help you?" I said, "Yes, probably so." So he went and got, he says, a phenobarbital and gave it to me, but that didn't do me any good. I didn't go to sleep until quite a while later.

Q. What's the time; could it have been the time that the Captain gave you this phenobarbital pill, before you went off watch? A. No, sir.

Q. Wasn't before you went off watch? A. No, sir; it was well after I went off watch.

Q. Well after? A. Yes, sir.

Q. Could you say approximately how long after? A. No, sir; I could not.

Q. Mr. Riche, I am referring to your Coast Guard testimony on page 185, Question 221, the question, At the time you made these entries in the rough deck log would you say that you were fairly calm and collective? Answer, No, sir. I didn't get calm and collective until quite a bit after. I had a sedative. I was nauseated a little bit and a bad cold.

The Court: Has not that been covered sufficiently, Mr. O'Connell? It all happened after the collision, whether he took aspirin or whether he took phenobarbital and as for the entry in the rough log, it is a very scant entry anyway, so why [855] spend all this time on it?

Mr. O'Connell: All right, your Honor. I will try to speed it up. I am just trying to refresh the witness' recollection as to when—

The Court: He has been over that some two or three times. He does not know exactly when he took the phenobarbital, so I think you had better leave that.

Mr. O'Connell: All right, your Honor, I will try to finish up.

Oliver Francis Riche—for Texas Company—Cross

By Mr. O'Connell:

Q. Are you responsible with the making of the log entries in the ship of this watch? A. No, sir; of my watch, yes, sir.

Q. You were here when Captain Cain testified before; is that right? A. Yes, sir; I was here.

Q. Captain Cain testified that you made the log entries. A. On my watch.

Q. On your watch. Now when were these log entries made? A. Just when Mr. Reid, the chief officer, relieved me.

Q. That was when? A. At four o'clock. I said I was on the twelve to four watch.

Q. You made the log entries about four? [856] A. Approximately four o'clock. I read the temperature and courses.

Q. Had you made any notations after the accident from which you referred to when you made your log entry? A. No, sir.

Q. So you made the log entry from your memory? A. It is a general practice, unless there is a lot of bells involved; we always use a bell book then.

Q. Am I correct in stating then, Mr. Riche, that you, when you made the log entry, did not know the name of the vessel or ascertain the name of the vessel with which your ship had collided with? A. No, sir; I tried several times to find out the name of the vessel.

Q. Tried to find out? A. Yes, sir. They did not give it to us.

Q. The naval officers on board, did you ask them? A. I asked them; yes, sir.

Q. They wouldn't give it to you? A. They didn't give me any name.

Q. I mean you asked them and they didn't give it to you? A. That's right.

Q. Now when the practice, I believe normally is when you're going off watch also to make a notation in the radar log? [857] A. That's right.

Q. Radar was on? A. That's right.

Q. Made no entry about that radar being on? A. I did not.

Mr. O'Connell: That is all.

The Court: Is there anything further?

Mr. Crenshaw: We have no further questions.

The Court: Let him stand down. Let him be released.

* * *

Deposition of James L. Smith

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF VIRGINIA

ALEXANDRIA DIVISION

In Admiralty Nos. 953 and 954

THE TEXAS COMPANY, as owners of the Tanker WASHINGTON,

Libellant,

v.

UNITED STATES OF AMERICA, as owner of the U.S.S. RUCHAMKIN, etc.,

Respondent.

DEPOSITION of JAMES L. SMITH, taken on behalf of The Texas Company, Libellant, pursuant to notice, before Philip H. Burt, a Notary Public in and for the Commonwealth of Massachusetts, at Room 601, 31 Milk Street, Boston, Massachusetts, on Monday, August 29, 1955, commencing at 2.30 p.m.

Present:

MESSRS. THACHER, PROFFITT, PRIZER, CRAWLEY & WOOD, (By JOSEPH M. BRUSH, Esq.), 72 Wall St., New York 5, N. Y., Proctors for The Texas Company.

THOMAS F. MCGOVERN, Esq., Admiralty and Shipping Section, Department of Justice, Washington 25, D. C., Proctor for United States of America.

Deposition of James L. Smith—Direct

STIPULATION

It is stipulated and agreed by and between proctors for the respective parties that the reading and signing of the deposition by the witness are waived.

JAMES L. SMITH, having been duly sworn, testified as follows in answer to direct interrogatories by Mr. Brush:

Q. Mr. Smith, where do you live? Have you a shore address? A. R.F.D. 3, Laurel, Delaware.

Q. Are you married? A. Yes.

Q. Do you have any children? A. Two.

Q. How long have you lived in Laurel, Delaware? A. Well, all my life. I was born and raised in the same place.

Q. What is your occupation? A. Seaman.

Q. How long have you been going to sea? A. I have got about fifteen years sea time.

Q. How long have you been married? A. Since '41.

Q. Have you lived at the same address for a number of years? A. Well, yes, except—'44 I moved down there. I was up in New York for a while. When I first got married, I had an apartment there.

Q. But, since 1944 or thereabouts, you have resided at the same address? A. Yes. And before that, before I was ever married, I had the same address. I had been there all my life at the same address. I live now the same place I did before I was married.

Q. Do you have a ticket or a license of any kind? A. A second mate's license, yes, ocean.

Q. In November of 1952, were you a member of the crew of the Tanker Washington at the time she had a collision with the Navy Destroyer, U.S.S. Ruchamkin? A. Yes.

Q. Do you recall now where and about when you joined the Washington? A. November 1, 1952.

Q. And in what port? A. Newburgh, New York.

Q. What was your position on the Washington? A. AB.

Q. What watch did you have? A. The 12 to 4 watch.

Q. Will you tell us in a general way what your duties were on the Washington? A. Well, the 12 to 4 watch, the AB has the first lookout from 12 to 1, and then he is relieved by the ordinary seaman. He goes back and has a break until 2 o'clock, when he relieves the quartermaster for a half hour. The quartermaster is relieved for a half hour for coffee, or rest period rather. Then at 3 o'clock, he is supposed to relieve the lookout until 4.

Q. On the night or morning of this collision, did you go on watch at midnight or thereabouts? A. Yes.

Q. And where did you first stand your watch? A. On the bow—forecastle head, they call it.

Q. Did you relieve a man who was lookout at that time? A. Yes.

Q. When you went up on the bow at midnight, what was the weather like? A. The weather? Oh, the sea was smooth and the visibility was good.

Q. Do you recall now about where the Washington was at the time? A. Well, between Cape Henry and Cape Hatteras.

Q. Do you recall also whether she was light or loaded? A. She was loaded.

Q. Is the Washington what is commonly known as a T-2 tanker? A. That is right.

Q. Do you remember now where the Washington was bound? A. Philadelphia.

Q. How long did you remain on lookout up on the bow? A. One hour, from 12 to 1.

Q. During that period, did anything unusual occur? A. No. No, nothing unusual.

Q. Did you have a practice on the Washington to report lights that you observed? A. Oh, yes.

Q. What was that practice? A. Well, it is the routine practice on most ships by bell signal.

Q. And what do you do? A. That is when you are on the forecastle head where there is a bell. Otherwise—

Q. Yes. A. Well, one bell is starboard, two to port and three, dead ahead.

Q. And then, is there any practice about receiving a reply from the bridge? A. Yes, the mate usually hollers out, "Very well", to recognize the bell. Of course, when you are way up on the forecastle head with no other communication, sometimes you can't always hear.

Q. Is that the common practice on most ships? A. That is common practice if you are on the forecastle head.

Q. Now, when it came around to 1 o'clock and you went off watch, who relieved you? A. One o'clock, Ordinary Seaman Upton.

Q. When you relieve each other or when you did relieve each other or he relieved you, did you have any conversation and, if so, tell us what the substance of it was. A. Very little conversation, except just on line of duty. I report the lights to him, tell him where they are at—some on the port and some on the starboard—and I told him at that time that I thought that they must be Navy ships.

Q. Do you remember now where the Washington was about 1 o'clock? A. The location, you mean? The latitude?

Q. Yes. A. Well, she was a little south of Cape Henry, a right good ways offshore and, actually you couldn't see no land.

Q. Are you familiar with the approximate speed of the Washington at that time? A. Well, yes. Running full speed, a T-2 should make between 14 and 15 knots.

Q. And is it your recollection that the Washington was making about that speed during your watch as lookout that night? A. Yes. Yes, I would think so—full speed.

Q. When Upton relieved you, did you tell him that there were some lights on the port and on the starboard? A. Yes.

Q. And did you also tell him that you had reported those to the bridge? A. Yes.

Q. Thereafter, what did you do? A. Thereafter, when I left there, it was fairly chilly that night and I don't think I was out on deck too much. I was just around the mess room waiting for a call, if they need you or anything, and I didn't see anything going on until 2 o'clock.

Q. When Upton relieved you at 1 o'clock and you pointed out these lights on the port and on the starboard, were any of those lights close by? A. No, no. They were six or seven miles away, at least.

Q. Did you remain aft until 2 o'clock or thereabouts? A. Well, about seven minutes of 2, I started to walk up to the bridge. You always relieve a little bit ahead of time, or try to.

Q. Do you remember now what route you followed or how you went up there to the bridge? A. Well, I went up on the—just left, and went up on the main deck, up into the midship bridge and then walked around on the starboard side and went in the door.

Q. As you proceeded from aft up forward to the bridge and thence into the starboard door of the bridge, did you observe any lights close by? A. No. No, there wasn't anything real close by.

Q. I take it then you went in and relieved the man at the wheel? A. Yes.

Q. And what was his name? A. Caldwell.

Q. Where was the wheel on the Washington located with respect to the forward bulkhead of the pilothouse? A. It is right in the center of the wheelhouse.

Q. And about how far abaft of the forward bulkhead portholes would you say? A. Oh, it is about seven feet.

Q. And where did you stand your watch, in front of or behind or how? A. Oh, behind the wheel, naturally.

Q. Do you stand or did you stand on a little platform of any kind? A. Yes, yes, a grating.

Q. Do you remember now, as you took over the wheel, what course the Washington was steering? A. 9, 009.

Q. And would that be true, gyro, or what? A. True gyro heading.

Q. By the way, who else was on watch at that time in the pilothouse? A. The mate. Riche was the mate on watch, second mate.

Q. Was there anyone else in the pilothouse? A. No.

Q. Thereafter, until the collision occurred, did anyone come into the pilothouse before the collision? A. No.

Q. Let us take your watch at the wheel. When you took over, you said it was on 009. Did you, after that receive any orders from the mate to change that course and if so, just tell us what those orders were? A. Oh, I wasn't up there long before he evidently saw some ships ahead or close on the port and he wanted to go right, so he says, "Right". Oh, "Right 10"—10 degrees. Yes, and I put the wheel about 15 degrees right, and I said, "Well, do you mean the compass or the rudder?" He said, "The compass." But then he says, "Midships", and then he wanted to know how I was headed when he said, "Midships" and I said, "25". So then she started to swing back again, which 19 should have been the course at 10 degrees to right, so he wanted to know again. I says, "24", or thereabouts, and we finally got around to 23 and he says, "Well, keep her on 23". So, we kept her on 23 for a while and then I suppose, when he got everything clear again, we come back on the course again, 009.

Q. Now, in the pilothouse at nighttime like that, is there a clock visible to you? A. Yes, there was a clock up on the starboard bulkhead.

Q. Could you see it in the dark or did you have to turn a light on? A. No, I could see it.

Q. Have you any idea of how long you were on 23? A. I think about five minutes.

Q. And then you received instructions to go back on 9? A. Yes.

Q. And what did you do? A. Well, I put the wheel to left and went back to 9 and then, when we got on 9, steadied up and go right along.

Q. During the time that you were turning to 23 and remained on 23, did you observe any lights of other vessels? A. No, no. I couldn't see very well out there.

Q. And then, when you got on 9, did you ever steady up on 9? A. Oh, yes. That was the course from then on, 9.

Q. After you had steadied on 9 then, I take it something occurred. Will you tell us what occurred, or how long were you on 9? A. Well, I was on 9 up until the time he gave the order, "Hard Left", to try to avoid the vessel. Yes. Well, he evidently saw a bunch of Navy ships over on the right—ships, rather; we will call them ships—over on the right, and he did make a remark about their coming this way. So, I started to look out of the porthole, naturally, as much as I can and then finally I see this red light through the starboard porthole, and just about that time he says, "Hard Left". And I made the remark, "It is right on top of us," but he wasn't paying no attention to that anyhow. The order was already given, "Hard Left". So, when he went out onto the port wing of the bridge, he says, "Hard Left", again. And of course I said, "The rudder is hard left," but I even stepped off the platform to have more purchase on the wheel, see, to get it over in a hurry.

Q. When he made this comment about the ships seem to be coming closer this way, you were then on 9? A. Yes.

Q. Had gotten back on 9? A. Yes, at that time we were back on 9, I guess.

Q. Did you ever see any colored lights on the ships that seemed to come closer to you? A. No, the only light I saw was that red light through the starboard port hole. That was a red line kind of thing, see.

Q. Was that far away or close to you? A. Oh, that was very close.

Q. How did it seem to be traveling, slow or fast? A. Well, it didn't seem to be traveling too fast at that particular time. Of course, it was practically 90 degrees on the bow at that time, anyhow. He was going right straight across. I don't mean—wait a minute. I mean—say, here is the bow over here (indicating). In other words, he was about 4 points from there, speaking of the compass. But then he was—it was about a triangle, you see. He was 4 points this way, but he was very close on the bow. That is what I mean by 90 degrees. When I say 90 degrees, that sounds as if the ship was abeam of us, speaking of the navigation equipment. That is what you always figure your bearings from, your navigation, the compass.

Q. When the mate apparently observed this light, you say he went out on the port wing? A. Yes. He went out on the port wing at the same time he said, "Hard Left".

Q. And then what happened? A. Well, then I could see through the forward port. You see, we have got three ports, and I could see through the forward port then and I saw the ship. He didn't seem to go right. He seemed to go right straight across and you were wondering why you didn't make contact sooner than you did. He did get half way across, about midships, before we made contact, and we were swinging left all the same time.

Q. And how were your engines going? A. Well, the engines were going the same speed ahead all the time.

Q. Until what time? Were they ever changed? A. Well, they weren't changed until after we made contact.

Q. About how long after? A. Well, just as long as it took him to get back from the wing of the bridge and reverse the engines; half a minute, I guess. That is about all.

Q. Did your ship sound any whistles, do you remember? A. Yes, sounded short blasts.

Q. About how many? A. Four or five short blasts.

Q. And when were those whistles sounded with respect to the order that you got? A. That was sounded just after he says, "Hard Left", and before the ships collided, just a very little while before.

Q. Do you remember now what the heading of the Washington was when the ships came together? A. No, I don't know exactly the heading at the time they came together, where we were swinging left on this 9 degrees. She hadn't swung very far, anyhow.

Q. Now, Mr. Smith, there has been some ligitation pending here for several years. Tell me, when was the last time before this morning that you saw me? A. The last time before this morning? Well, the last time was in Mr. Schwartz's office, whatever time that was. Let's see. I don't remember.

Q. Whatever that date was? A. I don't remember the date. Do you know?

Q. I don't remember now. A. That was the last time I saw you; when you were in Mr. Schwartz's office there in New York. It has been two years ago, I guess. Well, this was November of '52. How long has that been ago, now? November of '55 will be three years, won't it? Well, two years ago.

Q. Now, tell us, since this collision, what have you been doing? A. Well, that is getting pretty personal. In fact, for the last four months, I think they have been checking up on me close enough. I have not been robbing no banks.

Q. I don't mean of a personal nature. Have you continued to go to sea? A. Oh, is that what you mean?

Q. Yes. A. That is the only thing I have made anything at, anyhow.

Q. What companies have you worked for? A. Let's see. I think the President Lines, American President Lines. Oh, Warren Petroleum Corporation; then this National Bulk Carriers.

Q. How long have you been working for the National Bulk? A. Well, it lacks two days of being six months now.

Q. Have you been sailing up and down the coast on their tankers? A. I have made a couple of trips foreign during that six months, one to England and one to the Azores.

Q. At the present time you are on the Tanker Virginia of the National Bulk Carriers, are you not? A. Yes.

Q. And how long have you been on that vessel? A. Well, it is six months.

Q. And now, are you an AB on that vessel? A. Yes.

Q. Did I come out to your ship this morning in a launch and ask you to come ashore to give your testimony in this case? A. Yes.

Q. Since I last saw you in Mr. Schwartz's office, have you been in contact with Mr. Schwartz? A. I saw him once.

Q. Where was that? A. In Tiverton, Rhode Island.

Q. And have you also been in contact with a person representing himself to be a Government attorney? A. Yes. That was the same place.

Q. In the same place? A. Yes.

Q. Do you remember what his name was? A. I can't think of it now—Kopper.

Mr. Brush: May we stipulate, Mr. McGovern, that his name was Koppel?

Mr. McGovern: Yes.

The Witness: I don't remember the name, but I think that is what it was.

Q. Since this collision occurred, have you been interviewed by Mr. Schwartz or Mr. Sterling, his former partner, and have you given them a statement about the circumstances of the collision? A. No, the last time I was interviewed was the time that you were there, two years ago.

Q. And at that time you gave them a statement about the circumstances, or they asked you some questions and the stenographer took it down, was that right? A. Yes.

Q. Did you give a statement to the Government attorney? A. No.

Q. Did he interview you about the circumstances of the collision? A. No.

Q. What was the substance of his conversation in Tiverton when he saw you? A. Well, it seemed to be—the main thing was to get off the ship, you know, and this, that and the other. There weren't much said about the collision. That is what kind of surprises you, how people go so far to say so little. You get to studying about it and you wonder how ignorant you are or—(pausing).

Q. You kind of wondered why he came all the way to Tiverton, I suppose? A. Yes, that is right. Also, one of them was from Texas, you know.

Q. One of them was from Texas? A. Yes. The only thing they were speaking about was more or less when the case was coming up and when you could get off the ship, and this, that and the other. But, as far as talking much about the collision, there wasn't much said about it.

Q. Have you been in more or less regular communication with Mr. Schwartz? A. I have been calling him, yes.

Q. At his request? A. Yes, at his request.

Q. If I understand it, he has asked you to call him whenever you got in port? A. Yes.

Q. And that would be to call him at his expense? A. Yes.

Q. And what did he want you to do, tell him where you were and what you were going to do? A. That seemed to have been the main thing, yes.

Q. Where and when was the last time that you called him long distance or short distance? A. I called him from Freeport, just before we left there.

Q. That is just before you sailed on the voyage that terminated here? A. That was just about six days ago.

Q. Six days ago. And when before that had you called him previously? A. Well, that was about two weeks before that.

Q. How often have you called his office since this collsion occurred, would you say? A. Four times—oh, you mean the whole time, since the collision occurred?

Q. Yes. Have you made it a practice to call him whenever you got into port? A. I thought you meant the last time that they got all my—I didn't think you meant from the time the collision occurred. I thought you meant the last procedure.

Q. I see. A. That has been about four times.

Q. I don't want to go into the perhaps many times you have called him, but have you made it a practice to call him every time that you got into port? A. Yes, so that he would know where I was and keep in contact so that, when the case came up, and this, that and the other, he would know where I was. That has been about the only conversations that have been held.

Q. So that about every time you got into port, you would call Mr. Schwartz at his expense and tell him where you were and what you were going to do, and is it fair to say that Mr. Schwartz has known at all times where you are or were? A. Yes.

Q. Have I ever called you since the collision or asked you to call me to tell me where you are or where you were traveling? A. No.

Deposition of James L. Smith—Cross

Q. There has been some statement in some pleadings in this case, Mr. Smith, that I have been concealing you. What do you have to say about that statement? A. Well, I didn't even know you were still living, as far as I am concerned. I haven't heard nothing from you.

Q. But you have heard from Mr. Schwartz. Have you ever heard from any other Government employees other than this Tiverton visit? Have you ever been interviewed by the F.B.I., perhaps? A. No.

Q. Has anyone ever telephoned your wife to find out where you were, that you know of? A. Yes. I haven't been home in so long that I just get a letter now and then, you see. Just like now, I didn't get my mail before I left the ship.

Q. Today, when we came ashore and we went up to the Coast Guard offices, you were interviewed by Mr. O'Connell here of Mr. Schwartz's office, were you not? A. Yes.

Q. Did he give you a letter addressed to you by Mr. Schwartz? A. Yes.

Q. Have you got that letter? A. Yes.

Q. Will you produce it, please? A. (Producing letter.)

Mr. Brush: I would like to offer that letter.

(Letter, dated August 25, 1955, Marvin Schwartz to James L. Smith, marked Smith Exhibit 1.)

Mr. Brush: Your witness.

Cross-examination by Mr. McGovern:

Q. Mr. Smith, when you reported to the Tanker Washington, were you assigned to a regular watch and did you stay in that watch? A. Yes.

Q. That was the second mate's watch? A. Yes.

Q. Riche? A. Riche.

Q. You had the same other members of the deck department in that watch, or did they change? A. This ordinary

seaman that was on watch there at the time of the collision, he came on board at Port Arthur.

Q. Upton? A. Yes. The other fellow that got off down there, I wouldn't hardly know him if I saw him, even though we stayed in the same room there for one trip down. But, this Upton is the one that go on at Port Arthur.

Q. How about Caldwell? Had he and you been on watch together? A. Yes. He was on there all the time. He was on there when I left.

Q. How did they divide up the watch? I noticed on your direct testimony that the quartermaster appeared to be doing most of the steering. A. That is right. He steered three and a half hours, you might say, and this AB, myself, only relieved him for a half hour. I was relieving him at the time.

Q. Did the quartermaster ever stand a lookout watch? A. No.

Q. The quartermaster on this ship worked for three and a half hours out of four hours as a helmsman? A. Yes, and the other period was a rest period.

Q. Is that true with respect to the ship that you are on now? A. No. No, the ship that I am on now don't carry a man that they call a quartermaster.

Q. In your experience in going to sea— A. They carry two AB's.

Q. Yes. In your experience in going to sea for all of your life—1933, wasn't it, when you first went on board ship? A. Yes.

Q. Have you run into any other companies where they have had this system where the quartermaster stood almost the entire watch at the wheel? A. To tell you the truth, I don't believe I ever was with any other company but that. There is companies, but I haven't been there.

Q. How about the mate? Where did he usually stand his watch? A. In the wheelhouse.

Q. You are on a T-2 tanker. Was the wheelhouse a standard T-2 tanker wheelhouse? A. Yes, that is right.

Q. You had wings in the bridge? A. Yes.

Q. You had portholes facing forward? A. Yes.

Q. Were they round portholes or square portholes? A. Round.

Q. Could they be dogged down with heavy glass? A. Yes.

Q. Were they dogged down with heavy glass on the night of the collision, if you remember? A. I don't know for sure.

Q. How about the wings of the bridge? A. The wings of the bridge was—there wasn't no cover over the top of the wings. It was wide open, plenty of visibility.

Q. You had a clear wing on the starboard side and a clear wing on the port side? A. That is right.

Q. Were there doors between the wings of the bridge and the wheelhouse proper? A. No, the only doors went right in the wheelhouse. I think what you mean is a blind there, probably, where you have got another door. No, that wasn't there. There was only just one door, that is, you went in and you were there.

Q. The whole thing was a big spreadout, then? A. Yes.

Q. If you went out on the wing of the bridge, you had visibility up and down and then a sweep around at that side, is that right? A. Yes, that is right.

Q. If you went out to the other wing of the bridge you had visibility up and down and a sweep around? A. That is right.

Q. Where was the gyrocompass with respect to the portholes in the forward part of the wheelhouse? A. Well, the gyrocompass is placed off to the left on most all these ships, and that one, too. That is the gyro repeater you are speaking of?

Q. That is right. The gyro repeater, the one you steer by. A. Yes.

Q. Was that masked so that you could just see the little top part of it? A. Yes.

Q. Would it make a ticking sound as you swung? A. Yes.

Q. Where was the wheel with respect to the gyro compass repeater? A. Well, the wheel is placed just about on the keel of the ship, right in the middle point of the ship.

Q. How far as the wheel from the gyrocompass repeater? A. Oh, two and a half feet. That is, the middle of the wheel.

Q. Where was the radarscope? A. Well, the radarscope, the radar machine, which is what you mean, was over to the left of the gyrocompass, right over next to the bulkhead on the ship.

Q. So that, when you stood at the wheel, you would look forward and out one of the portholes? A. Yes.

Q. But you couldn't see unrestricted? A. That is right.

Q. Could you see out the other porthole which was on your right side, as you stood at the wheel? A. The only one you could see out of was just a little aft of you. You could see out of that.

Q. How about the one on your left hand, could you see out of that, or was the gyro in the way? A. Oh, no. The gyro—you can see out of all three of them portholes. But, naturally, there is a partition in between which blocks off the sight.

Q. Could you see the gyroscope from where you were standing at the wheel? A. You mean the radarscope?

Q. The radarscope. I am sorry. A. Well, yes. But when you have got the helmsman's job, you can't very well plot anything on it. You can probably see an object on the radarscope, but that would be just about as far as it could go.

Q. You would have to leave the wheel and take a couple of steps to go over there to look at it? A. Yes, to see anything worth while.

Q. You wouldn't be allowed to leave the wheel? A. No. That wouldn't be in your line to leave the wheel at all like that.

Q. Were you allowed to smoke when you were in the wheelhouse? A. No.

Q. Were you allowed to smoke when you were out on lookout? A. No.

Q. Was the mate allowed to smoke in the wheelhouse? A. Well, yes, on most all ships. Yes, there wasn't no restriction there. I have seen cases where they didn't but, no, they could smoke.

Q. Was he smoking that night? A. I don't think so.

Q. Was Riche a heavy smoker? A. No.

Q. What part of the world did he come from? A. What part of the world?

Q. Yes. A. Well, he came from Louisiana, I think.

Q. Was he a Louisiana Frenchman? A. Yes.

Q. Was he a big man or a small man or medium? A. Pretty heavy man, yes.

Q. How tall? A. Oh, about five, ten.

Q. How about Upton. What kind of a man was Upton? A. Well, he was a little bigger than Riche. He was about six feet. I guess he weighed 200 pounds.

Q. You met him for the first time when he came aboard at Port Arthur? A. Yes.

Q. Where had he come from, if you know? A. Where had he come from when he was in Port Arthur?

Q. At Port Arthur, yes. A. I don't know.

Q. Do you know whether or not he had come from a Marine hospital? A. No, I don't.

Q. You left Port Arthur and went around the end of Florida, is that right? A. Yes.

Q. And came up the coast; but before you came up the coast, you put into Miami? A. Yes, that is right. I forgot about it, but we did. I will take your word for it, anyhow.

Q. Do you remember now? A. Oh, yes, sure—no, we didn't put in to Miami. I will take that back. We went into the Miami Seaway and the Coast Guard came out.

Q. And what did you put aboard the Coast Guard? A. We took a wiper off, a sick wiper, and the Coast Guard took him ashore at Miami.

Q. And you pulled out of Miami and came on up the coast, is that right? A. Yes.

Q. Were you far out from the coast at any time during this particular trip? A. Were we what?

Q. Far off. A. Well, you never see the coastline once you leave Jupiter there, the Florida Coast, you never see the coast any more, especially going north, until you get just about where you are going.

Q. After you left Jupiter on the course you were on, when would be the first time that you would expect to sight land? A. I imagine you would be just about up on the Delaware-Maryland shore. Well, you might see—well, Fenwick Island is the first thing you would see before you got there. I was just trying to think of another lightship you might pick up between Virginia and—

Q. Winter Quarter. A. Winter Quarter, yes. I have passed there so many times. I couldn't think of it right then. Winter Quarter, you might see that, too.

Q. Put yourself back in your mind to the night when you went on watch, and you went on lookout. Did you relieve a man named Brown, or was it a man named Owens? A. The one I relieved on the 8 to 12?

Q. Yes, the fellow from the previous watch. A. I don't know what his name was.

Q. You don't know what his name was? A. No.

Q. You weren't his roommate? A. No.

Q. What, if anything, did the lookout tell you when you relieved him as he turned over the watch to you? A. When I went up to relieve him at 12 o'clock?

Q. That is right. A. I don't remember now whether there was any—I don't think there was any—let's see. Yes, there was Navy ships out there at that time, too. Yes, there were ships out there at that time.

Q. This is customary in the Merchant Marine, is it not, for one lookout to tell the other lookout what ships are where? A. Oh, yes.

Q. As part of your regular duties? A. That is right.

Q. Where did you stand your watch with respect to the forecastle head? Was there a wind dodger up there? A. No, no dodger up there.

Q. You were out in the open, is that right? A. Right out in the open. You could see all around the horizon.

Q. What kind of visibility was there? Was it foggy? A. Good visibility.

Q. Did you see any lightships? A. No.

Q. Could you see the lights of any other vessels? A. At the time I was relieved, you mean?

Q. No, during the period that you were on lookout. A. Well, no. I think these Navy craft were about the only ones I saw.

Q. When did you see the Navy craft? A. Well, practically the whole watch they were up on the port and starboard, you know.

Q. How did you know or surmise that they were Navy craft? A. Well, they were in kind of a formation and I figured that the only thing they could be would be either Navy or fishermen, and the Navy ships are usually heavier. One of them had a red light, I believe, on the foremast.

Q. Was there any blinking back and forth? A. Yes, there was a little blinking, too. That was the biggest reason I figured they were Navy.

Q. You sailed during the war? A. Yes.

Q. Did you sail in convoy? A. Yes.

Q. You were accustomed to seeing ships in formation at night? A. Yes.

Q. When Upton relieved you, what, if anything, did you tell him with respect to the ships which you had seen? A. Well, I told him there were ships on the starboard and on the port and I said that I thought they were Navy ships.

Q. Did you tell him that you had reported them? A. Yes.

Q. Had you reported them? A. Yes.

Q. What system did you use? A. Used the bell system, one for starboard.

Q. Had you received a reply from the mate, a "Very Well" or "Well", indicating that he had heard your report? A. No. No, I couldn't hear that.

Q. On any steamship line on which you had been employed was there a custom of replying with their bell to a bell signal, by which I mean a lookout rings a bell and then the mate replies with a bell? A. No. That would be a good idea, but I never heard of it, never saw it done.

Q. After you were relieved by Upton you went back and had a cup of coffee, did you tell us? A. Oh, yes.

Q. And then you went up and relieved Caldwell? A. Yes, at 2 o'clock.

Q. When you were on the wheel at 2 o'clock, and I want to call your attention to the fact that the collision occurred about 15 minutes after 2, so I am trying my very best to get your recollection as it happened from 2 o'clock on, was there any report by the lookout of any vessel? A. Yes. Well, just before two, he rang one bell. That indicated a ship on the starboard side.

Q. Did the mate reply to this? A. Yes, he said, "Very well." Then, after 2 o'clock, there was another bell.

Q. How shortly after 2 o'clock? A. Oh, that was about five or six minutes after two, I guess.

Q. Was this a single bell, too? A. Yes.

Q. Did this indicate a ship on the starboard side? A. Yes.

Q. Did the mate reply to this? A. Yes.

Q. How much time do you estimate elapsed between the time that the mate said, "Very well" to this second report of a ship on the starboard side and the time that he told you that there were ships on the starboard side? A. Oh, that wasn't over three or four minutes either, I guess, that he mentioned about the ships being over on the starboard side.

Q. Did he say anything about which way they were coming? A. He said they were coming towards him, yes. Ships over on the starboard side—no, he said, "There are ships coming this way." Of course, he was on the starboard side. That was the side he was looking. Yes, they were coming towards us on the starboard side, which is a very bad indication because you don't like anything coming towards you on the starboard side, if you can help it. The port side is bad, too, but—(pausing).

Q. Since you hold the mate's license, you appreciated the importance of the starboard side, is that right? A. Yes.

Q. Did the mate make any effort to call the captain at this time? A. No.

Q. Did the mate make any effort to call the captain before the collision occurred? A. No.

Q. Where was the captain's quarters with relation to the bridge? A. It is right down on the next deck.

Q. Is there a speaking tube for communication? A. Yes.

Q. Do you know why the mate didn't call the captain? A. No.

Q. Have you thought about it before I asked you the question? A. Well, no. No, I didn't even think about it. The only thing I think—maybe he didn't think it was worth while until after the collision. It was too late then, just like anything else. He didn't have to call him after the collision because the whistles woke him up, see?

Q. About what time was it that you changed course from 009 on your gyro over to the right when you went, I think, to— A. 23.

Q. To 023, from 9 to 23? About what time was that with respect to 2 o'clock? A. That was right after I relieved the man on the wheel, right around 2 o'clock.

Q. Just about 2 o'clock? A. Yes.

Q. At that time did your ship blow any whistle signals? A. No.

Q. About what time was it that you changed course back from 023 back to your main course of 009? A. We were on that course, I think, about five or six minutes, you know, and then we went back.

Q. So it would be five or six minutes after two, is that right? A. Well, and then it takes a little while to get back on the course from that course.

Q. Now, when your vessel changed course back to your main course, did you blow a whistle? A. That is the first time anybody has asked me about that. I was surprised. No.

Q. You mean you were surprised that nobody asked you that question before? A. Yes, because it is not done anyhow most of the time on ships.

Q. You were surprised that the Coast Guard didn't ask you that, weren't you? A. Yes, sure. I was surprised the Coast Guard didn't ask me. It is not done, but that is the international rules of the road. Whenever you change your course, if it is to the right, you blow one whistle; to the left, two.

Q. At any time? A. At any time, yes.

Q. That is your understanding? A. Yes. Isn't that right?

(Discussion off the record.)

Q. Let's get back to your radarscope. Was anybody looking at the radarscope at any time from 2 o'clock on? A. No.

Q. Was the mate looking at the radarscope? A. No.

Q. Where was the mate? A. Looking out the porthole.

Q. Before you testified here today, did you look at your testimony before the Coast Guard? A. Yes.

Q. I call your attention there that you were asked this question, Question 122:

> "Was anyone operating the radar, I mean anyone giving it any attention, or was it running by itself?"

And your answer was:

> "Well, he was looking in it once in a while, I would say, but then the ships was in view. He was more or less concentrating his viewing of them rather than the radar."

Is that correct? A. Yes.

Q. Well now, you understand that to lawyers that may be inconsistent with the testimony you have just given. Do you want to explain the difference between the two of them? I am not trying to trap you. You see, you told the Coast Guard that he looked at the radar once in a while and you just said here that he didn't look at the radar and we just want to get— A. Well, if it is just that little much difference, he looked at it once in a while, then. We will have it that way.

Q. Well, we don't want to just have it. A. Well, like I say, he did. Of course, like I say, it has been almost three years ago and I can't remember just exactly what happened, see. He probably was looking at the radar once in a while, but he was concentrating more on the visibility of the ships.

Q. Did any vessel appear to signal to you before the collision? A. Yes, there was a vessel trying to signal. Whether it was to us or not, I don't know. I think the mate figured it was, maybe.

Q. When did this signal first come in? A. Well, that was a right good while before the collision.

Q. About 2 o'clock? A. It may have been a little after two, two or three minutes after two.

Q. *Not as much as five minutes after two?* A. *I don't* think so.

Q. From what side did this signal appear to come? A. It was on the starboard side.

Q. How did the signal come, by flashing? A. I couldn't see it. It was a series of A's, I figured, yes, to attract any ship in the vicinity. I have heard since that the light flashes are when you are on a speed run, or something. We figured—I did and he did, too—that they were trying to signal.

Q. How do you know he figured that they were trying to signal? A. Because he tried to make contact with them, see.

Q. Tell me about that. A. He used the blinking key for a while.

Q. Where was the blinking key? A. I believe he had a portable key there plugged in that he used.

Q. Where did the blinker come out? A. The blinker was on the yardarm.

Q. The yardarm? A. Large blinking lights. That is the one he was using.

Q. On a T-2 tanker, where is the yardarm with reference to the bridge? A. It was right over the top of the bridge.

Q. What were the lights which would have been blinking? A. What color were they? A. Oh, white.

Q. They were white? A. Yes.

Q. Do you know what he was trying to send back? A. No—yes. I think he was just sending them a dash, maybe, to try to get them to say something, whatever they wanted to say, and he finally gave it up. He figured they were trying to call us, so he gave a dash to show that he had seen them, you see; and then if they wanted to say anything they could. But, there wasn't nothing said, I don't think.

Q. Did this signalling keep up for some time? A. No, not long, a couple of minutes.

Q. How long would you say it was between the end of the signalling and the collision? A. How long between the end of the signalling and the collision?

Q. Yes. A. Well, I guess it was about ten minutes.

Q. As much as ten minutes? A. I think so, yes. It wasn't much after 2 o'clock before—I mean when he first started signalling with him, you know.

Q. You mentioned in your direct testimony about fishing boats. When did you first hear that anybody on your vessel thought these were fishing boats? A. Well, who said that anybody thought so?

Q. What? A. Who said that anybody thought so?

Q. In your direct testimony, you mentioned fishing boats. A. Well, the only one that thought so was myself, probably. I mean, nobody said anything about thinking they were fishing boats.

Q. Did you think they were fishing boats? A. I said I either thought they were fishing boats or Navy boats.

Q. You saw the blinker? A. Then, I thought they were Navy ships.

Q. I was wondering, because you wouldn't expect fishing boats to be blinking, would you? A. No.

Q. And fishing boats carry a different set of lights from Navy vessels, particularly if they have got their fish nets out? A. Oh, if they have got their fish nets out, they do. Yes, you can usually tell a Navy ship.

Mr. McGovern: Thank you.

Redirect examination by Mr. Brush:

Q. Mr. McGovern was saying that this blinker sort of indicated to you that they were Navy ships. What blinker are you talking about? A. Well, I mean the International Morse Code.

Q. I am not talking about that. You testified on cross-examination that there were two occasions when you saw blinkers; one was when you were relieved at lookout, is that right? A. Oh, yes.

Q. What color light was that blinking? A. That was white.

Q. Have you ever testified that that was red? A. No.

Q. You don't remember that? A. I never did.

Q. I am now talking about when you were relieved by Upton as lookout. As I understand it, you had concluded that different lights which you had seen at that time had come from Navy boats because you had seen some blinking, and that was around 1 o'clock or shortly before 1 o'clock? A. Yes.

Q. And then, later on, some ten minutes before the collision, you think there was some additional blinking off your starboard side, is that right? A. Yes.

Q. How did that blinking bear from the Washington? Was it ahead on the bow, or abeam, or abaft? A. Well, I couldn't see well enough. The only reason I know there was blinking going on was because the mate answered it.

Q. The mate came in and answered it? A. Yes.

Q. Did you hear him say anything? A. No, he didn't have anything to say.

Q. You assumed that, because he was blinking, someone was blinking to him? A. Yes, I assumed that. That is my opinion, you see.

Q. Did you ever see these lights, these blinking lights, at that time? A. No, I don't believe I ever saw the light

itself. I could see the loom of it, it seemed like, you know, but not the light itself.

Q. As far as you know, no reply ever came? A. No.

Q. To the Washington, at any rate? A. No.

Q. How far away was this signalling or blinking going on, do you judge, at 1 o'clock? Was it nearby? A. It must have been about two miles.

Q. Why do you say that? A. Well, I would say if it had been so far away—

Q. You wouldn't have seen it? A. No. Well, these shutter lights that they use you can see a good ways, but I don't think he would have been interested enough, if it had been too far away, you know. The mate would have figured it wasn't him, anyhow, but some other ship over there.

Q. This was 1 o'clock, and how did those lights bear from your Washington at that time? A. This time of the blinking, you mean?

Q. Yes. 1 o'clock we are talking about now. A. You are talking about when I was on lookout?

Q. Yes. A. I thought you was talking about when I was on the wheel and he was trying to answer them.

Q. Oh, no. You said you didn't see them at that time. You only saw the loom of the light or perhaps the reflection. A. Yes, that is the time I was on when he was trying to answer them, yes.

Q. I am talking about the blinking at 1 o'clock from which you concluded and commented to Upton that they probably would be Navy ships. Where were those lights with reference to the Washington? How did they bear? A. They were bearing about two points on each bow, the same ships that I was speaking about, you know, up on the bow, on both sides.

Q. Yes, that is what I thought. How far away were they? A. Well, they were about six or seven miles.

Q. And you think you could have seen the blinkers at that time at that distance? A. Well, I tell you. A shutter light you can see just about as far as anything, the regular high powered Navy which they use.

Q. Have you any idea in which direction those lights were traveling? A. They didn't blink very long, anyhow. We know—I was almost sure that they weren't blinking at the Washington. They were that far away, see. It was just a matter of flashing which you could see amongst the ships themselves.

Q. Have you ever received any money from Mr. Schwartz? A. No.

Q. None at all? A. No.

Q. Did you ever receive any money when you came to his office and talked to Mr. Sterling when you gave this statement? A. Well, they paid me for being ashore, yes, what time I was off—or tried to, but naturally, I was off longer than I got paid for.

Q. Do you recall now about how much that was? A. No, I don't remember how much it was.

Q. Have you received any money from either Mr. Schwartz or Mr. Sterling since then? A. No.

Q. I notice that you have a second mate's license but that you haven't sailed as second mate for some time. Can you tell us why? A. Well, jobs are so scarce that I just don't bother with it. On the President Lines' ship, I was third mate on that, to the Far East. But then shipping is slow and so I just don't bother with it.

Q. Since that time you have sailed as AB? A. Yes, except that trip I made to the Far East.

Q. We are going to ask you whether you waive signing this. You have the privilege of waiving the signing of this deposition, if you want. A. I will waive the signing of the deposition.

Certificate

Mr. Brush: That is all.

Mr. McGovern: Thank you, sir.

(Deposition closed.)

CERTIFICATE

COMMONWEALTH OF MASSACHUSETTS, SUFFOLK, } ss.:

I, PHILIP H. BUBE, a Notary Public in and for the Commonwealth of Massachusetts, do hereby certify:

That James L. Smith, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal the day of September, 1955.

.....

Notary Public

Rual B. Caldwell, Coast Guard Testimony

A witness entered and was duly sworn.

By the Recorder:

1. Q. Give your name and address to the reporter? A. Rual B. Caldwell, Sourlake, Texas.

2. Q. What certificate do you hold issued by the Coast Guard? A. Able Seaman.

3. Q. May I see it? A. Yes. (Witness produced document.)

Recorder: "Z" No. 206558, endorsed for Able Seaman.

4. Q. What was your job on the Washington on the day of the collision? A. My job on the Washington was Quartermaster, helmsman.

5. Q. Were you on the bridge at the time of the collision? A. No, sir. I was not on the bridge.

6. Q. Where were you then? A. I was aft having coffee at the time. Excuse me. At the moment it happened I was on my way back to the room to get a pack of cigarettes when I heard the whistles blowing.

7. Q. What time did you leave the bridge? A. At approximately 2 a. m.

8. Q. What time were you due back? A. At 2:30.

9. Q. What knowledge do you have of the happenings at the time of the collision? A. At the time of the collision I have knowledge, sir, of the happenings of the collision.

10. Q. Did you hear any whistles blown? A. Yes, sir. I heard whistles. Rapid blasts on the ships whistle.

11. Q. How many? A. Well, more than a half dozen.

12. Q. Where were you when you heard it? A. I was in the starboard passageway adjacent to the crew's quarters

of the deck department and I had gone down there for the purpose of the cigarettes in my room.

13. Q. Did you go to the bridge? A. No, sir. I didn't immediately go to the bridge.

14. Q. When did you go? A. Well, it must have been about 5 minutes maybe it might have been 10. I didn't immediately go to the Bridge.

15. Q. What would that make it on the clock? A. Well, it might have been about 2:25.

16. Q. Had you been out on deck before the collision? A. No, sir.

By the Board:

17. Q. What work did you perform commencing at the time you went on watch at mid-night? A. I was on wheel watch at mid-night until 2 a. m.

18. Q. Were you on continuously until 2 a. m.? A. Yes.

19. Q. How did you go aft from the wheel house? A. By the catwalk.

20. Q. How did you get on the catwalk? A. Out on either wing. I came out the port wing I believe and down that way.

21. Q. From a position at the wheel could you see out ahead? A. Directly ahead I could have, yes, sir.

22. Q. Did you see any vessels in sight at around just before 2 o'clock? A. No, sir, not from the position at the wheel.

23. Q. Did you see any lights of vessels when you went out on the wing to go aft? A. I never observed any, no, sir.

24. Q. Did you particularly look for any? A. No, sir, I didn't.

25. Q. What did these whistle signals mean to you, the series of whistle blasts? A. Well, to me it meant that it was a danger signal and I immediately turned around

as I said, I was in the starboard passageway and the best I remember, I started back up to the companionway which leads out to the mess hall and to the poop deck and I didn't get to the poop deck until someone, I don't recall right at this moment, came down the companionway ladder and told me we hit somebody or somebody hit us and I immediately returned to my room to get my life jacket and then I went back up on deck.

26. Q. You went back up on the bridge? A. No, sir.

27. Q. Up on the Poop deck? A. Yes, sir.

28. Q. Did you see anything up ahead from that position when you were on the Poop deck? A. No, sir, I didn't; not immediately.

29. Q. Who relieved you of the wheel at 2 o'clock? A. The Able Seaman on watch by the name of Smith, I believe.

30. Q. Did you go back to the wheel house shortly after the collision? A. Shortly, yes, sir.

31. Q. What did you observe up there? A. At the time I got back I observed the Navy vessel that is involved off to the port hand and evidently we had backed away at that time. The deck lights were on at that time, you know the flood lights and you got a pretty good impression.

32. Q. Where are these flood lights? A. They were on the wings of the poop deck.

33. Q. On your ship? A. Yes, sir.

34. Q. Were there any lights visible on the Navy ship? A. Yes, sir. There were.

35. Q. What lights did you observe? A. The lights that I distinctly observed were the normal running lights which in this case was a red light, port light of the Navy vessel and mast light. I assume of course there was other lights that I don't know the significance of.

36. Q. Did you go directly into the wheel house when you went back to the bridge? A. I went directly into the wheel house.

37. Q. Whom did you see in there when you arrived? A. The A.B. on the wheel and I don't remember definitely who else was on the bridge at that time. Inside the wheel house however; the Captain was on the wing of the bridge, the port wing at that time. I do remember him because he was using a megaphone and said something.

38. Q. Did you receive any orders from anyone in the wheel house? A. At that time I didn't, no, sir.

39. Q. Did you at any time? A. Immediately, no, sir. There was quite some time before the orders were given to the wheel.

40. Q. Did you see or hear the Second Mate up there? A. Yes, sir, I must have. At that moment and what position I don't remember.

41. Q. Did you hear anything he might have said to the Captain? A. No, sir. I didn't hear anything.

42. Q. Did you hear what the Captain said through the megaphone? A. No, sir. I didn't get that.

43. Q. Do you know to whom he was speaking to through the megaphone? A. Directly to the Naval vessel I believe.

44. Q. What wing was he standing on at the time he was speaking? A. On the port wing.

45. Q. Did you hear any response from the Naval ship? A. No, sir. I did not.

46. Q. Were you injured as a result of the collision? A. No, sir, I wasn't.

47. Q. Did you experience any difficulty with the steering mechanism during your two hour watch? A. No, sir. Nothing at all.

48. Q. How did she steer? A. She responded normally.

49. Q. What is normal for the Washington? A. Well, the wheel is a slightly stiff, but it's a T-2 tanker. I think I observed the same stiffness in most of them.

50. Q. Nothing out of the ordinary? A. Nothing out of the ordinary.

51. Q. Were you present in the wheel house at the time the bell was struck about 2 o'clock? A. No, sir. I had departed the wheel house before the bells were struck. That is more or less normal procedure in leaving a little early.

52. Q. You left by the clock then? A. No, sir. Well, normal procedure is the relief at the wheel comes up a few minutes before the designated time.

53. Q. Who was the lookout when you went on watch at mid-night? A. I believe when I went on watch I think that would be the guy coming off the 8 to 12.

54. Q. Went on with you? A. That was the Able Seaman Smith. He went on the lookout at 12 midnight.

55. Q. What other members of the crew was on watch with you? A. At that time I think there was a fellow by the name of Upton, which was an Ordinary Seaman and he was on standby aft.

56. Q. Where was Smith standing his watch? A. On the forecastle head.

57. Q. Do you recall any reports being received by the bridge from the lookout to the effect that the running lights were burning brightly or satisfactorily? A. Well, I didn't hear anything to that effect but I know that, well I don't know whether. No, I didn't hear anything.

58. Q. Did you hear anything to the effect that they were not burning brightly? A. No, sir.

59. Q. How is that usually transmitted from the lookout to the bridge by voice? A. Yes, sir.

60. Q. He sings out? A. Yes, sir.

61. Q. You didn't hear him sing out? A. No, sir. It would be kind of hard.

62. Q. Did you relieve the wheel at any time between 2:15 and 4 o'clock? A. Yes, sir.

63. Q. At what time? A. Approximately 2:15 I believe. To the best I remember I remained there until 4 a. m.

64. Q. During that time did you hear anyone have conversation with people who were not of the ship's company of the Washington? A. No, sir. Excuse me. Yes, sir. There was. Of course I didn't hear the conversation, no, sir, but there were people aboard from the Navy vessel.

65. Q. There were people aboard from the Naval vessel? A. Yes, sir.

66. Q. At what time did they come aboard? A. Maybe it was around 3. To the best of my knowledge, 3 a. m.

67. Q. Did those people come to the bridge? A. Yes, sir.

68. Q. Did you hear any of their conversation at all? A. No, sir.

69. Q. How many were there in the party? A. Three, that is all.

70. Q. Did you see the lights of any vessel between midnight and 2 o'clock? A. At a distance I saw what I assumed to be vessels. Just from glancing up from the compass but they was a long ways off.

71. Q. At about what time was that? A. That must have been 1 o'clock.

72. Q. What was your course at that time? A. 009°.

73. Q. Were you steady on your course? A. Yes, sir.

74. Q. In what relative bearing to the ship did you see those things that you thought were lights or vessels? A. Well, the ones I remember seeing at that time; approximately that time was oh, maybe 3 points on the port bow.

75. Q. Could you distinguish them as the running lights of vessels? A. No, sir, not the type of vessel I couldn't.

76. Q. Could you tell in which general direction they were proceeding? A. No, sir. Merely the white lights and I didn't or even thought about it. I don't think I could have if I wanted to at that time.

77. Q. Did they look close aboard or far away? A. Far away, sir.

78. Q. Did the lookout report the lights at all? A. Yes, sir. Evidently should.

79. Q. Did I understand you to say that the lookout did report the lights? A. Yes, sir.

80. Q. Approximately how many lights do you recall that you saw? A. Well, it might have been 3, it might have been 2, I don't remember.

81. Q. And you previously stated that the color was white? A. Yes, sir.

82. Q. All of them were white lights? A. Yes, sir.

83. Q. Were they clearly the lights of vessels rather than the lights of an aid to navigation? A. I believe so, they were steady lights.

84. Q. Would they be apt to be reflections from the lights of the bridge, the wheel house? A. No, sir.

85. Q. At any time during that 2 hours did the Officer in charge of the watch comment upon the lights? A. Well, I believe he might have but I don't remember what he had to say.

86. Q. Did he give any indication to you that he had seen the lights? A. I can't answer that directly because I don't remember.

87. Q. Did he give you any change in course? A. At one time he did.

88. Q. And what course change was that? A. To the port at that time.

89. Q. At about what time was that change in course? A. Around, well, that is when I must have seen the vessels. At that time it must have been around 1 o'clock or approximately. I don't remember that clearly.

90. Q. Was this change in course a temporary change from which you immediately or very shortly returned back to your basic course of 9° or was it a change that was retained for the remainder of the watch until 2 o'clock. A. It was a temporary change.

91. Q. Did the officer in charge of the watch indicate why he made the temporary change in course? A. I don't

remember sir. He might have and he might not have. I don't know if he did.

92. Q. Do you know if anyone was injured in the casualty, in the accident? A. The ordinary seaman evidently was injured leaving the forecastle head at whatever time he left the forecastle head. I assumed that was due to the accident.

93. Q. What was the course which the quartermaster was supposed to be steering when you left, when you were relieved? A. When I was relieved the course was 9.

94. Q. 9? A. Yes. 009°.

95. Q. By Gyro? A. By Gyro, yes.

96. Q. And did the man who relieved you repeat that course back to you to make sure that he had it? A. Yes, sir, he did.

97. Q. And who relieved you of the watch? A. A fellow by the name of Smith, Able Seaman.

98. Q. Was this the man who was on the lookout? A. Yes, sir, between 12 and 1, the same man.

99. Q. Who relieved Smith from the lookout? A. Ordinary Seaman, Upton.

100. Q. You were in a position to know all these things now from first hand knowledge, is that correct? A. I am only in a position to know that that is the way it should have been done, ordinary practice. As far as having seen the man relieve the man I don't know.

101. Q. Do you know where Upton was standing his lookout watch? A. The forecastle head.

102. Q. Was that on instructions from the officer in charge of the watch or just on the normal procedure of standing a watch? A. Normal procedure.

103. Q. What was the weather conditions at the time around, say 1 o'clock? A. At 1 o'clock the weather was clear.

104. Q. What was the condition when you left the bridge at 2 o'clock? A. The weather was clear.

105. Q. Were there any changes in speed of the vessel during that period of time? A. Between 12 and 2 there was no changes in speed.

106. Q. Was the officer of the watch on the bridge all the time you were on watch? A. Yes, sir.

107. Q. Was he alert, moving around? A. Yes, sir.

108. Q. Was the master on the bridge at any time during the two hours you were on watch? A. During the period of 12 to 2 he was not on the bridge.

109. Q. As the quartermaster, what were your duties on the bridge? A. To steer the vessel.

110. Q. And nothing more? A. Nothing more.

111. Q. When that change of course to port was ordered, how much of a change in course was made? A. Well, honestly I can't answer that definitely, but I don't believe it was much over 20 degrees approximately. I'd say approximately 20 degrees change; maybe not that much.

112. Q. What was the order which you received from the officer of the watch which caused you to change the course to the left? A. He told me to come left, give a left wheel, which normally to me would be a very small amount of rudder and then after the ship got into position that he wished it, he told me to steady it and whatever the course was so I repeated it after I got the ship steady. I told him whatever she was heading. I don't remember what it was.

113. Q. After this change in course what was the position of those lights that you saw? A. They were then past the bow over on the starboard hand.

114. Q. And the course was sufficient to bring the lights from about 3 points on the port bow over to your starboard bow, is that correct? A. Yes, sir. It was evidently more than a 20 degree change.

115. Q. And how long after that 20 degree change of course to the left was it before you returned back to your course of 9°? A. After the change to the left I believe it

must have been well maybe 10 minutes but, not, I don't remember whether it was 20 degrees or what it was. I mean I don't mean to imply that was 20 degrees definitely. I don't remember.

116. Q. Were you able to see these lights after you had returned to your basic course of 9? A. No, sir. I don't remember seeing those lights.

117. Q. How long had you been signed on this vessel, the Washington? A. I signed on September the 4th, this year.

118. Q. When did you become aware of the identity, of the positive identity of the other vessel in the collision? A. The positive identity of the other vessel, when I went back to the bridge sir.

119. Q. And about what time was it that you returned to the bridge? A. Shortly before 2:30. Approximately 2:25.

120. Q. You previously testified that when you heard someone say that there had been a collision that you went back to your stateroom and got your life jacket? A. Yes, sir.

121. Q. How long did it take you to do that? A. It must not have taken me over two minutes if it took me that long.

122. Q. Then you proceeded directly to the bridge? A. No, sir.

123. Q. Why not? A. I don't know exactly why not. I went on the poop deck. I don't remember exactly why I didn't proceed directly to the bridge.

124. Q. What is your normal station in the event of a collision? A. In the event of collision I have No. 2 fire station forward on the foredeck. That is the general alarm I assume.

125. Q. Was the general alarm sounded? A. I don't remember it being sir.

126. Q. When you got to the bridge after equipping yourself with your life jacket did you see any vessels other than the Washington? A. I saw the Naval vessel, sir.

127. Q. How many? A. The one that was involved in the collision at the time that I got to the bridge.

128. Q. Where was it with relation to the Washington when you saw it? A. On the port bow in relation to the Washington.

129. Q. Was it close aboard or far removed? A. Fairly close.

130. Q. Could you hear any voices on the damaged Naval vessel? A. No, sir.

131. Q. How do you know it was the damaged Navy vessel that you were looking at? A. I didn't know it was the damaged Naval vessel, I assumed that.

132. Q. After you returned to the bridge with your life jacket what did you do? A. Relieved the man at the wheel, took that station.

133. Q. And the man at the wheel was? A. Smith.

134. Q. Smith? A. Yes, sir.

135. Q. Do you know what Smith did? A. No, sir. He left the wheel house.

136. Q. Was the master in the wheel house when you returned to the bridge? A. No, sir. He was on the port wing.

137. Q. He was on the port wing of the bridge? A. Yes, sir.

138. Q. Could you hear him talking with anyone? A. I heard him speak over the megaphone. What he said I don't know.

139. Q. Did you hear anyone talking towards the Washington from the Naval vessel? A. No, sir.

140. Q. Where was the Second Mate standing his watch during the time you were on the bridge, that is, relatively? A. Relatively he was standing near the port hole in the wheel house most of the time and if he was ever from there he went out on the wing.

Examination of Rual B. Caldwell

141. Q. Was it apparent to you that he was not keeping a sharp lookout? A. I believe, I would say he was keeping a sharp lookout.

142. Q. Do you know whether or not he saw the lights that you saw? A. No, sir, I can't say that I know what he saw. I assumed he did.

143. Q. How much time was the interval between the time you saw these lights around 1 o'clock and until the course was changed to the left? A. A very short period of time, perhaps 5 minutes, that is when I saw them.

144. Q. Did you report the lights to the officer in charge of the watch? A. No, sir.

145. Q. Do you know whether or not the lookout reported them to the officer in charge of the watch? A. I heard two bells, that is the system that we use. I assumed he heard them; I heard them.

The Board: Any questions Mr. Brush?
Mr. Brush: No, thank you.
The Board: Cdr. Schlegel?

By Cdr. Schlegel:

146. Q. You said that you heard the two bells from up forward which you assumed to be your lookout giving a report of the ships ahead. Exactly what did those two bells indicate to you? A. That there was an object sighted on the port hand somewhere.

147. Q. Did the mate on watch give any indication of having heard these two bells? A. Yes, he picked up his glasses and looked to the port.

148. Q. Will you describe your visibility as you stand at the helm? A. As I stand at the helm I can see directly ahead best first of all and approximately 2 to 3 points; maybe I can't. I think maybe I can on the port and starboard hand but that is limited visibility because of the

ports. There are three ports. One in the center and one on each hand.

149. Q. And you looked through the forward port or is it looking through all three of these ports that gives you the full forward visibility of 2½ either side? A. All three of the ports to give the visibility.

150. Q. Were these ports open or closed on the evening when you went off watch at 2 a. m.? A. The glass ports to the best of my knowledge were closed.

151. Q. Were all the openings in the wheel house closed when you went off watch at 2 a. m.? A. No, sir.

152. Q. What was open? A. The two doors were open and maybe the port that is on the port side of the wheel house might have been open. I don't remember.

153. Q. Can you say of your own knowledge what arc of visibility the mate on watch had from the station where you said he was standing his watch for the most part? A. From my own knowledge I can't give—tell you exactly.

154. Q. Just approximately, as best you can? A. Well, I would say that he at least had—with the port being closed the couldn't have had 180° visibility. I'd say 95° on each side.

155. Q. 95° on either side of zero? A. Yes.

156. Q. Did he change from that position very frequently during the time up until 2 a. m.; from mid-night until 2? A. I don't remember whether it was frequently but I know he did walk back and forth and several times he went out on the wing of the bridge, but I don't know how many times.

157. Q. Do you know whether or not any messages were received aboard the Washington to stand clear of these vessels which were the white lights that you saw up ahead? A. No, sir. I have no knowledge of any messages being received.

158. Q. Now, I want to make doubly sure, was the lookout who reported the lights the same Smith who was

the helmsman at the time of the collision so far as you know? A. I wouldn't know that because I believe that was around 1 o'clock and they change up there sir approximately 1 o'clock.

159. Q. On the lookout? A. Yes, sir. They change lookouts, so I wouldn't know.

160. Q. But Smith, whom you presumed to be up there; I think you indicated earlier that Smith was the one who should have been on lookout during that interval, didn't you? A. Well, what I meant to indicate was that he went up on there at 12 o'clock. Now, when the man left I don't know, but I assumed he left at 1 o'clock.

161. Q. And the man who was up there at 12 o'clock was the same Smith who had the wheel, to whom you relinquished the wheel at 2 a. m.? A. Yes, sir, that is correct.

162. Q. And had Smith been relieved of lookout at 1 o'clock or there abouts, do you know whom his relief would have been? A. That would have been Upton.

163. Q. At the time you turned the wheel over to Smith at 2 a. m., what instructions did you give him if any? A. I gave him the normal instructions; to steer the course 9° which was the course—the ship's course at that time and he repeated the course. When I knew he understood then I gave him the wheel.

164. Q. When after you relinquished the wheel at 2 a. m. or thereabouts, were you conscious of your engines being placed in reverse, if you ever were? A. Well, I can't give a definite answer, but approximately maybe 15 minutes maybe 20 minutes, I left the wheel.

165. Q. And was this before or after the collision impact? A. Well, I never really ever felt the collision impact. The only change that I had of unusual feeling of the ship was when she went astern. I assume she might have been going astern.

166. Q. Can you tell me how long either before or after you heard the first blast of this series of whistles it was that you became conscious that the engines were in reverse? A. Immediately after. The only thing I can say I was conscious anyway.

167. Q. How many times approximately had you stood watch with the mate who was on watch at the time of the collision? A. I have been on that watch since September 4 and I couldn't estimate approximately.

168. Q. It's been several times though? A. Yes, sir, it has.

169. Q. After you had made this temporary change of approximately 20 degrees to port and had held it for approximately 10 minutes, when you came back to the course, did you come back rapidly or did you ease back to your original course? A. We eased back, sir.

170. Q. Approximately how long do you estimate it was from the time that you received the order to come back to your original course until you were in fact on that original course? A. Well, maybe it was two minutes but it was real easing back on the course and it wasn't rapid.

Cdr. Schlegel: That is all sir.

The Board: Does anyone else have any questions for the witness.

By the Board:

171. Q. Was the master notified of this temporary change in course? A. To my knowledge he wasn't notified.

172. Q. He was not notified? A. No.

173. Q. Was there any lights in the wheel house? A. No, sir, there wasn't.

174. Q. It was in total darkness? A. Yes, sir. Except for the little light on the compass for steering purposes.

Examination of Rual B. Caldwell

The Board: Any further questions for the witness?

Mr. Brush: No.

Cdr. Schlegel: No.

175. Q. You are at liberty to state anything which you think should be a matter for the record in this board which has not already been brought out by the questioning? A. Well, I don't believe I have anything further sir that would help out because I didn't see nothing. Everything—whatever I saw, if I saw anything was after it happened and it—

176. Q. You have nothing further to contribute to this hearing? A. No, sir.

(Neither side, the parties in interest or the Board desired to further examine the witness.)

(The witness was duly warned, dismissed and he withdrew.)

* * *

(The Board adjourned at 1645 hours, 17 November, 1952 to reconvene at 1000 hours, 18 November, 1952.)

James Arnold Upton, Coast Guard Testimony

A witness entered and was duly sworn.

By the Recorder:

1. Q. Give your name and address to the reporter. A. My name is James Arnold Upton; rating on ship, Ordinary Seaman, S.S. Washington.

2. Q. What is your address? A. 319 Columbia Avenue, San Francisco, California.

3. Q. What certificates do you hold from the Coast Guard? A. Sir?

4. Q. What certificates of Service do you hold of the Coast Guard? A. Ordinary and Wiper's.

5. Do you have your papers with you? A. Yes, sir. (Produces papers.)

Recorder: Z-678534, Wiper, Ordinary Seaman.

6. Q. What was your job on the Washington at the time of the collision with the Navy transport Ruchamkin? A. I relieved the lookout at 0100, and the able bodied seaman had reported all lights when I relieved the lookout.

7. Q. At 1 o'clock? A. 0100. And at some time, I can't say exactly, because I didn't have a watch, maybe something before 2:00 I reported a light off the starboard bow around three points; and when 2 o'clock came I rung the ship bell. I rung four bells for 2 o'clock, and about two minutes later I reported the same light again, because the ship was approaching us very fast. And later, I'd say 10 minutes, I rung a bell. That is when the ship came into collision. From there I don't know what happened.

8. Q. You first saw the light shortly before 2 o'clock? A. Yes, sir.

9. Q. You reported the light to the bridge? A. I did. I rung one bell.

Examination of James Arnold Upton

10. Q. Did you get any answer from the 2nd Mate? A. That, I don't know. I didn't hear.

11. Q. Did you ring the bell loud enough to hear? A. Yes, sir.

12. Q. Could you speak a little louder please so that everybody can hear? A. I rung the bell very loud. And if he repeated it I didn't hear him.

13. Q. That was before 2 o'clock? A. Yes, sir.

14. Q. Then when was the next signal that you gave to the bridge? A. Well, after 2 o'clock—something after 2:00. I don't know, I didn't have a watch. I rung the same light another bell, and the light was approaching us very fast; and the third time I rung all the bells. I don't know exactly what did happen there, I was out. When I come to my senses I was laying on the well deck.

15. Q. What kind of lights were these that you saw on the starboard bow, Mr. Upton? A. Starboard bow—if they had any running lights I did not see them—I saw only the mast lights.

16. Q. No colored lights? A. Yes, if they was on I never saw them.

17. Q. This was the first sighted lights before 2 o'clock? A. Yes, sir.

18. Q. Did you see the colored lights at all before you landed on the well deck? A. No, sir.

19. Q. Were there two white lights or were there more? A. Only one white mast light.

20. Q. One mast light? A. Yes, sir.

21. Q. Where were you from 12 to 1? A. I was on standby in the messhall where I could hear the phone ringing. If the phone rung I would report to the bridge immediately.

22. Q. Who was on lookout from 12 to 1? A. Able Bodied Seaman.

23. Q. What was his name? A. Smith.

24. Q. Did you report your own lights at 1:30? A. Yes, sir.

25. Q. Were they burning bright? A. Yes, sir.

26. Q. What lights were on? A. The port light, the starboard light and the mast light.

27. Q. Did you have a range light—after light? A. On the bow?

28. Q. No, on the after mast? A. Yes, sir. Well, the mast forward, it was burning.

29. Q. Were you carrying a range light, a white light aft on the after mast? A. Yes, we was carrying one, yes, sir.

30. Q. Was it lit at 1:30? A. I was on the bow, you can't see from the bow up through the midship aft.

31. Q. You can't see the range light from where you are at on the forecastle head? A. I don't know about that sir, but I do know the forward mast light, the starboard and port was all burning.

32. Q. And they were burning at 2 o'clock also? A. Yes, sir.

33. Q. You reported that to the bridge after you struck the four bells? A. No, sir, I checked when I first went on lookout.

34. Q. Didn't you report them thereafter? A. I have been, but that time I didn't. If they hadn't been burning I would have hollered to the bridge.

35. Q. I see. But you rang four bells for 2 o'clock? A. Yes, sir.

36. Q. But you don't make it a practice of reporting the lights unless there is something wrong with them? A. Yes, sir.

By the Board:

37. Q. Why did you ring four bells at 2 o'clock? A. Well, they ring the ship's clock bell in the wheelhouse. I repeat them.

38. Q. You heard the bell from the wheelhouse and you answered it with four? A. Yes, sir.

39. Q. That was how you knew it was 2 o'clock? A. Yes, sir.

40. Q. Did you hear any bells at 1:30? A. Yes, sir.

41. Q. Were any bells struck at 1:00 o'clock? A. Yes, two bells.

42. Q. Who struck them on the forecastle head? A. I just had relieved the lookout. I struck them myself.

By the Recorder:

43. Q. Did you leave the forecastle head at all between 1 and 2 o'clock? A. No, sir.

By the Board:

44. Q. Was this light that you saw on the starboard, was that the only light you saw between 1 and 2 o'clock? A. No, sir, there was several other lights. There was a light on the port side I reported that, and I reported the one on the starboard.

45. Q. The one on the port that you reported, have you any recollection of the time approximately as to when that was? A. It was something around between 1 and 1:30.

46. Q. You saw no lights from 1 to 2? A. The lights was there had already been reported to the bridge by bells.

47. Q. I don't understand—I mean between 1 and 2 did you see any other light other than the two that you have spoken of, the one to port and the one to starboard? A. Yes, there was a few lights, but they was away off distant.

48. Q. When you relieved Smith at 1 o'clock, did he point out any lights to you? A. Yes, sir, he reported one

on the port bow—off the port bow had been reported and some on the starboard had been reported.

49. Q. Could you see those on the starboard at 1 o'clock? A. Yes, sir.

50. Q. What happened to the light that was on the port bow at 1 o'clock? A. At 1 o'clock it crossed our bow around about 1:15.

51. Q. Do you know, if after seeing that light on the port bow, your ship changed course or not? A. Yes, sir, it did change course.

52. Q. Where did it leave that light that was on the port bow after a change of course was made? A. Yes, sir, it did change course.

53. Q. Did it put it on the starboard side? A. Yes, sir.

54. Q. Then what happened to it? A. Then when this ship on the starboard was coming—

55. Q. Wait a minute, this is—about what time did this happen, this change of course; you came on at 1 o'clock and Smith said there is a light off on the port bow, is that right? A. Yes, sir.

56. Q. Then later on the ship changed course and put it on the starboard—how soon after 1 o'clock was that change of course made? A. I don't know exactly, I couldn't say what time.

57. Q. Was it before you struck three bells at 1:30? A. Yes, sir.

58. Q. And that change of course put the light that was on the port bow on your starboard bow? A. Yes, sir.

59. Q. And then, in addition there were other lights on the starboard bow, is that correct, at 1 o'clock? A. Yes, sir, at 1, just when I relieved.

60. Q. And shortly after 1 o'clock after the change was made? A. Yes, they—I said they had already been reported.

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61. Q. What happened to those lights that were on your starboard bow after the change of course was made? A. They were still on the starboard bow far off distant.

62. Q. Did they eventually pass astern of you or did they remain on your starboard? A. They remained off the starboard off to a distance.

63. Q. Could you see any side lights on those lights off to starboard? A. What do you mean, sir?

64. Q. Any red or green light? A. No, sir, I didn't see any.

65. Q. Shortly before 2 o'clock you reported a light three points on the starboard bow? A. Yes, sir.

66. Q. Now, between that first report you made and the next report you made at about 2 o'clock did the bearing of that light change? A. No, sir.

67. Q. It stayed steady at three points? A. No, sir, it didn't stay steady.

68. Q. Well then it did change? A. Yes, sir, it must have.

69. Q. Which way did it change? A. It looked like it was coming around toward us.

70. Q. Could you illustrate for us? (Witness handed sketching paper.) A. It came in this direction, and after I rung all the bells—four or five bells it finally changed like this. (Sketches position of vessels.)

71. Q. And all you could see at the time was the light? A. Yes, sir.

72. Q. You could not see the shape of the vessel, could you? A. Not until I was right up on it.

73. Q. I know, but at the time you first reported that light, was the light all you could see? A. That is all I could see, the light.

74. Q. What gave you the impression that it was moving fast? A. Well it wasn't very long from the time I reported the first time till I reported the same light the second time.

Q. And between that time where had the light moved, if it had moved. I mean, when you first saw it it was three points—which way did it move? A. It came about three points and a quarter more; probably if it hit us it would hit us right around midships.

75. Q. But the light when you first saw it was three points on the starboard bow? A. Yes, sir.

76. Q. Now, where was it when you next reported it? A. Just a little distance, about three-quarters—3¼ points.

77. Q. You mean it was more to the right or more to the left? A. Well, it was more to the right.

78. Q. So the light remained about on the same bearing? A. I wouldn't say that no, not on the same bearing, no, sir.

79. Q. Well, between the time that you first reported the light and the time you made the next report, do you know if your ship changed course or not? A. Yes it did change.

80. Q. This is the light on the starboard we have reference to? A. Yes, sir.

81. Q. Did the change of course as made by the Washington make any change in the bearing of that light? A. The first time it changed it changed I'd say about 10 degrees to the right, and then later it came back on the course.

82. Q. When did you first make out the loom of the vessel? A. The loom was right at the last when I rung all the bells. It approached so fast all I could think of was ringing the bells—four or five bells.

83. Q. Did you hear any whistle signals from either vessel? A. I heard whistles from our vessel.

84. Q. What whistles did you hear? A. I think it was a short whistle and a long whistle.

85. Q. How many shorts? A. That, I don't recall.

86. Q. Well, was it one short or a number of shorts together? A. I think it was two shorts and I don't know how many long ones there was; I was excited.

87. Q. Where were you standing at the time you first saw this—reported this light to starboard? A. Right on the bow.

88. Q. Forward of the windlass? A. Yes, sir.

89. Q. Where were you standing when the ship hit? A. I was at the bell.

90. Q. And where is the bell located? A. Back—

91. Q. With respect to the windlass? A. Back of the windlass.

92. Q. What happened to you when the ships collided? A. From there when I come to my senses I was on the well deck.

93. Q. Did you see the ships hit? A. No, I was all excited; if it hit I didn't know anything about it, I was out.

94. Q. Were you on the forecastle head when the ships hit? A. I was at the ship's bell on the forecastle head.

95. Q. And which way were you looking? A. I was ringing the bells and trying to look forward. I was all excited.

96. Q. Did you see any lights on the other ship? A. Just the mast light.

97. Q. Did you hear any whistles sounded from the other ship? A. No, sir.

98. Q. When the ships hit did you see anything? A. I didn't, no.

99. Q. Do you recall hearing how the crash sounded? A. I don't know anything about that, I was laying on the well deck when I come to my senses.

100. Q. Did you pick yourself up? A. I was just in a dream wandering around there; I don't know what I was doing.

101. Q. How long have you been going to sea in the Merchant Service? A. I have been going to sea since 1936 sir.

102. Q. Offshore ships? A. Offshore.

103. Q. Have you been going to sea in American ships all that time? A. All the time in American ships.

104. Q. American ships? A. Yes, sir.

105. Q. Ships on which Articles are signed? A. Yes, sir, coastwise, inter-coastal, foreign articles.

106. Q. Now, at 0100 when you relieved Smith, how many different lights did he point out to you? A. There was three or four on the port—quite a lot of them on the starboard.

107. Q. Quite a lot of them on the starboard? A. Yes, sir.

108. Q. Since going to sea since 1936, how many of those years have you sailed in the deck department? A. Well, I'd say since the war in the deck department—sailed since the war in the deck department.

109. Q. And have you served as lookout on each of your voyages? A. Yes, sir.

110. Q. How many vessels would you estimate were represented by these lights that Smith pointed out to you? A. That, I couldn't tell sir.

111. Q. Well, you say you saw a number of lights on the port bow—do you think that was one vessel, two vessels, how many? A. I would say maybe three vessels there.

112. Q. You think that as a result of the lights that were pointed out by Smith there were three vessels on the port bow? A. Yes, sir.

113. Q. As a result of the lights that he pointed out to you on the starboard bow how many vessels do you think there were out there? A. Off distance I couldn't tell, it seemed to me they were lined up like fishing boats.

114. Q. Have you ever served in the Navy? A. Yes, sir.

115. Q. When was that, before '36? A. No, after—during the war.

116. Q. What types of ships did you sail in in the Navy? A. Destroyers.

117. Q. In the deck department? A. No, sir, below.

118. Q. Engine room? A. Yes, sir.

119. Q. How many years were you in the Navy? A. 1940 to 1946.

120. Q. About how far—these lights you saw to starboard that Smith pointed out to you, were all white lights? A. White lights, yes sir.

121. Q. How far off would you guess they were? A. That, I couldn't say sir—quite a distance.

122. Q. Is there a phone system between the lookout station on the forecastle head and the wheelhouse? A. Yes, they got one down below under in the forecastle head.

123. Q. It's not on the forecastle head? A. No, sir, just a ship bell.

124. Q. Is that the only means of communication other than yelling that you have between the forecastle head and the wheelhouse, is the bell? A. Yes, sir.

125. Q. Did you do any yelling to the wheelhouse after you took over lookout watch at 1 o'clock? A. No, sir.

126. Q. Did anyone from the wheelhouse yell at you? A. No, sir.

127. Q. Did you hear any shouting or yelling from the other ship before it was hit? A. No, sir I didn't.

128. Q. Did they flash any lights, such as searchlights or blinkers on the ship? A. You mean from the ship we hit?

129. Q. Before the collision did the ship which the Washington eventually hit shine any searchlights or blinker lights? A. No, sir.

130. Q. Now, having in mind at 1 o'clock those lights that were pointed out to you by Smith, did you yourself pick up any other different lights between that time and 2 o'clock? A. Yes, sir.

131. Q. What lights did you pick up? A. I picked up one on the port bow—off the port bow.

132. Q. And you said you picked up one on the starboard? A. Yes, sir.

133. Q. Just before 2 o'clock? A. Yes, sir.

134. Q. When did you pick up this new one on the port side? A. I picked that up before I seen the one on the starboard.

135. Q. Could you make out any side lights, red or green side lights on any of these lights that you yourself picked up? A. No, sir.

136. Q. Were any of these—you know the difference between the masthead and a range light? A. Yes, sir.

137. Q. This one you picked up on the port side, was it showing more than one light? A. Only one.

138. Q. Only one? A. Only one.

139. Q. You stated that you heard and answered the bells struck in the wheelhouse at 1 o'clock and 2 o'clock? A. When they ring the bell—the clock bell—I repeat it.

140. Q. Do they strike a bell with the ship's bell? A. Yes, sir.

141. Q. The clock bell, can you hear the clock bell? A. No, sir.

142. Q. Had you heard a bell other than the clock bell at 1:30 and 2? A. You cannot hear the clock bell, but when it strikes in the wheelhouse they ring the ship's bell there and I repeat them on the forecastle head.

143. Q. That is what I'm trying to get clear—you did hear the ship's bell at 1:30 and 2 and you answered? A. Yes, sir.

144. Q. But you testified that you did not hear the ship's bell answer the bell you use for reporting lights, is that right? A. I didn't hear it, no sir.

145. Q. During the period from midnight to 1 o'clock you were on standby, is that correct? A. Yes, sir.

146. Q. And you spent it back in the crew's quarters? A. In the crew's messhall right by where I could pick up the phone.

147. Q. What did you do back there? A. Standby.

148. Q. Did you have anything to eat or drink? A. No, sir, nothing.

149. Q. No coffee? A. Oh, we—I had coffee, yes, sir.

150. Q. How many cups of coffee did you have? A. I very seldom ever drink coffee.

151. Q. I know, you said you had some. A. I had a couple of cups—usually drink tea.

152. Q. You had a couple of cups this morning? A. Yes, sir.

153. Q. Did you drink it black or with sugar? A. Black.

154. Q. What time did you turn in the night of the 13th? A. The 13th?

155. Q. The occasion of the collision was at 2 o'clock or so on the morning of the 14th. A. I don't know sir.

156. Q. Do you know how many hours sleep you had, if any, before you went on watch? A. Before I went on watch? I went to bed about 5:30, I got up at 11:30.

157. Q. Did you sleep? A. Yes, sir.

158. Q. When you were standing by in the mess hall did you have any messages on the phone from the wheelhouse? A. No, sir.

159. Q. Did you call the wheelhouse? A. No, sir.

160. Q. Did you have any calls from any part of the ship by phone? A. No, sir.

161. Q. Do I understand you to say, that all the reports regarding the lights which you made were all reported, were shouted back to the bridge? A. Out there?

162. Q. Yes. A. I didn't shout back.

163. Q. How did you make your reports to the bridge? A. By bell.

164. Q. Did you report the lights to the bridge? A. By bell, yes, sir.

165. Q. You mean the lights which you saw from your ship, how did you report those to the bridge? A. By the bell on the forecastle head.

166. Q. How did you get on the well deck? A. I don't know that sir.

167. Q. Do you know how long you were on the well deck? A. No, sir.

168. Q. Are you sure that the change in bearing of these lights which you observed was due to a change in course of your ship? A. Say that again sir?

169. Q. You have stated that some lights you sighted were on the port bow? A. Yes, sir.

170. Q. And that they appeared to cross the bow to the starboard? A. One ship.

171. Q. One ship? A. Crossed.

172. Q. You have also stated that your own ship changed course? A. Yes, sir.

173. Q. How do you know your own ship changed course? A. Well, the ship that crossed our bow crossed it—I could see our ship moving over to clear the ship that crossed the bow.

174. Q. What is your best estimate as to the distance off of this ship which crossed your bow—how far was that away from your ship when it crossed your bow? A. Well, the one that crossed from the port side to the starboard side, I'd say it was 8 mile off.

175. Q. Do you know what kind of a ship it was? A. No, sir.

176. Q. Were you sick at all on the day of the 13th? A. No, sir.

177. Q. Had you been hospitalized at all? A. No, sir.

178. Q. When you went on watch were you feeling satisfactory? A. Yes, sir.

179. Q. Feeling well? A. Yes, sir.

180. Q. Feeling as good as you usually do when you go on watch? A. Yes, sir.

181. Q. You have stated that you were lying on the well deck when you came to? A. Yes, sir.

182. Q. Do you have any idea what time that was? A. No, sir, after I rung the four or five bells, from there on I don't know what happened.

183. Q. Did you see this—any vessel just prior to the collision with the—involving the Washington? A. Say that again?

184. Q. Did you see any other vessels just prior to the Washington's collision? A. Before or after, what do you mean?

185. Q. Just immediately before? A. Well, when I was ringing the four or five bells call I could see the Navy ships there, but all I could see of it—and I was all excited—

186. Q. From which direction were they approaching? A. They was approaching us on our starboard bow.

187. Q. Were they running dark? A. Only the lights on the mast that's all.

188. Q. You saw the lights on the mast? A. I did.

189. Q. And in what direction were they approaching? Were they approaching you from dead ahead or from off the bow or abeam? A. Across our bow.

190. Q. Were they crosing from starboard to port? A. Yes, sir.

191. Q. Do you have any idea of what speed, were they going very fast, were they going slow? A. They was going very fast.

192. Q. Do you recall the actual collision? A. You mean when it hit?

193. Q. Yes. A. No. I was all excited.

194. Q. What made you excited? A. Sir?

195. Q. What made you excited? A. You see a ship coming in towards you.

196. Q. Why should that have excited you, other ships have approached you I suppose, why should that particular ship have excited you? A. I don't know, but I don't like being on that forecastle head when anything like that happens; that Navy ship approaching us that way.

197. Q. Was it close enough so that it scared you? A. Yes, sir.

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198. Q. How long had it been in sight before you began to get scared? A. I didn't get scared until I went to ring the bells.

199. Q. Well, about how long had you seen the vessel then before you began ringing bells? A. I'd say four, five minutes.

200. Q. And had you signalled to the officer of the bridge one bell indicating that there was something on your starboard bow? A. Yes, sir.

201. Q. And had he indicated back to you that he had heard your signal? A. That, I didn't hear sir.

202. Q. Does he have any way of informing you that he has heard your signal? A. If he was to call, the phone is down in the forecastle head down by that—I would have to run from the bow all the way down the ladder to the phone and back up.

203. Q. Do you know if anyone on the crew of the Washington involved in this—do you know if anyone who was in the crew of the Washington who was in this collision suffered any casualties? A. Myself.

204. Q. Yourself? What happened to you? What injuries did you suffer? A. My back's bothering me.

205. Q. Your back is bothering you? A. Yes, sir.

206. Q. Where? A. (Witness stands) Right around here sir. (Indicating lower part of back.)

207. Q. Have you received any treatment for that injury since you were on the well deck? A. Yes, I went to a doctor Saturday night.

208. Q. Where? A. Here in Philadelphia.

209. Q. Did you get any treatment at all aboard the ship prior to the arrival in Phliadelphia? A. I got treated for some skin—little cuts on my hip here—and I got some ointment to rub on my back to keep it from getting sore.

210. Q. And who treated you from the ship? A. The captain; also the chief mate.

211. Q. Did you tell them how you got this injury? A. Yes, sir.

212. Q. What did you tell them? A. Well, at the time I was wandering around there; I couldn't feel nothing for maybe a couple of hours later; it was bothering; it hurt, and I told them I was hurt.

213. Q. Well, from the time you picked yourself up off the well deck till you reported to the master of the ship that you were injured, what did you do? A. I reported the accident something around two hours later.

214. Q. You reported the accident about two hours later? A. Two hours, about my back being hurting.

215. Q. From the time you found yourself on the well deck until you turned yourself in to the master reporting that you were injured what did you do, stay on the well deck; did you go back and have coffee; did you go up on the bridge; did you take the wheel? A. No, sir, I didn't steer.

216. Q. How did you spend the time from the time you were on the well deck until the time you reported to the master? A. Well, I was wandering around there, and when I came to my senses I went up to the forecastle head and stayed there until my relief came up, and relieved me.

217. Q. And who relieved you? A. Mr. Smith.

218. Q. And, do you know what time it was that he relieved you? A. Not exactly, no.

219. Q. Do you know whether he relieved you at the time—at the normal time for relieving the watch? A. I think so.

220. Q. Were you required to do any further work after you had reported to the master that you were injured? A. No, sir, I didn't do no more work. He told me to lay around and take it easy.

221. Q. And you did that? A. Yes, sir.

222. Q. Do you know of anyone else besides yourself who was injured? A. No, sir.

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223. Q. Did you at any time prior to the accident, between the time you were on—during the time you were on watch were you able to identify any of these various vessels which were carrying the lights—that is as to size, as to shape? A. No, sir, I couldn't.

224. Q. How do you know this was a destroyer which was bearing down—when did you learn that this vessel which was bearing down on the bow of the Washington, and eventually was in collision with the Washington—how did you know that was a naval vessel? A. Naval vessel? I didn't know until after I come to my senses.

225. Q. During the time that you were on watch on the forecastle as lookout, and prior to the collision, were the conditions as regarding the anchor engine and the other equipment up there normal—that is, were they stowed normal as far as you could see? A. I don't know sir.

226. Q. Did you hear any noise such as the bumping of an anchor chain or anchor against the bow of the ship? A. You mean before?

227. Q. Yes? A. Before we had any accident at all—no, sir.

228. Q. Then, as far as you know both anchors, were properly housed? A. Yes, sir, as far as I know.

229. Q. What sort of visibility did you have that night? A. Sir?

230. Q. What sort of visibility did you have while you were on watch? Was it unlimited visibility; could you see five, 10 miles, 20 miles, or was it thick fog? A. I could see at least five, six mile away.

231. Q. Was there a bright moon? A. That, I don't remember.

232. Q. What was the weather like—windy? A. It was a little windy, yes.

233. Q. What was the sea like? A. Calm sea.

234. Q. Do you feel that the reason you went up on the well deck was because of the collision and not because

of having been thrown there by some other force than the collision? A. Yes, sir.

235. Q. Did anyone come to your assistance when you fell in the well deck? A. I don't know sir.

236. Q. When you went back up on the forecastle head after the collision, where was the Navy ship? A. It had done pulled away. The Navy ship had pulled away. I don't know what happened--who pulled away, first—I don't know.

237. Q. Could you see the Navy ship at all? A. Yes, you could see it off the distance.

238. Q. How far off could you see the ship itself? A. Could see part of it.

239. Q. Where was it? With respect to your position on the forecastle? A. I would say it's about one point off.

240. Q. On which side? A. Port.

241. Q. Port side? Well, when you went back up on the forecastle head after the collision did you observe any change in the condition of material or equipment on the forecastle head? A. I was so rum-dum, I don't know, I was addled, I didn't know whether I was coming or going.

242. Q. When did your mind clear up? A. I know what I was really doing? It was about two or three o'clock that afternoon.

243. Q. Was the ladder to the forecastle head or the ladder which you used going up and down the forecastle head bent or twisted in any fashion? A. That, I don't know.

By the Recorder:

244. Q. When you reported the light on the port side to the second mate did he answer by a bell stroke? A. No, sir.

245. Q. Well, is it customary when you report a light for the second mate to answer you or any of the mates on

watch to answer you in any particular fashion? A. No, sir.

246. Q. He didn't answer with a bell stroke? A. He can't see the light, he gets his binoculars.

247. Q. But it's not customary for him to answer with a bell stroke or shout to you? A. No, sir.

By Mr. Brush:

248. Q. Mr. Upton, what was the name of the doctor that you saw Saturday night? A. Dr. (refers to paper in wallet) Charles H. Barnett, 1022 Spruce Street, Philadelphia.

249. Q. Last evening you were examined at the Public Health Station across the street were you not? A. Yes, sir.

250. Q. And then you were taken by Captain Mackey and me to St. Agnes Hospital? A. Yes, sir.

251. Q. Now, sometime thereafter, after we left, you received a visitor, did you not? A. Yes, sir, I did.

252. Q. Do you know who he was? A. No, sir I don't.

253. Q. Could you describe him for us? A. He was something around five-and-a-half foot tall, fair complexion, had a Navy uniform on.

254. Q. And, did he have a conversation with you? A. Well, he asked me was I on the Washington? I said I was. He said "Well, how did this accident happen"? I said, "Well, be in court tomorrow and you'll find out.

255. Q. What time of the evening was this? A. It was something between, I'd say between 8:30 and a little after 9.

256. Q. Where were you at the time? A. In the hospital.

257. Q. What sort of a uniform did he have on? A. As far as I know he had a blue—white shirt.

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258. Q. Was it an officer's uniform or an ordinary sailor's uniform? A. He had two stripes here, I did notice that. (Indicating right arm.)

259. Q. Did he give his name? A. No, sir. He said he had checked the ship and I wasn't on board.

260. Q. And you were not on board? A. Yes, sir.

261. Q. Did he say he was from the Navy? A. He said Navy Department, that is all he said.

262. Q. Navy Department, but he didn't give you his name? A. Yes, and he asked about the circumstances of the collision.

Mr. Brush: That is all.

Board: Mr. Lanning do you have any questions?

Mr. Lanning: No questions.

Board: Mr. Holden, do you have any?

Mr. Holden: No.

Board: We'll take about a five-minute break here.

(The board recessed at 11:15 for five minutes.)

(This reporter relieved by Irving Levine, SN (CR) USCG.)

(Irving Levine SN(CR) USCG entered as reporter relieving Thomas A. Keeley, YNC(CR) after a five minute recess.)

By Mr. Brush:

263. Q. Mr. Upton, were you served with a subpoena by the Coast Guard? A. I was.

264. Q. When? A. Saturday.

265. Q. And have you been under subpoena since that time? A. Yes, sir.

266. Q. To appear here and testify? A. Yes.

Mr. Brush: That is all.

By Cdr. Schlegel:

267. Q. Mr. Upton, that man that you described as a Navy officer with two stripes that visited—where did he visit you and when? A. In Saint Agnes Hospital.

268. Q. And when? A. Last night.

269. Q. Last night? A. Yes.

270. Q. Do you know what kind of an insignia he was wearing on his sleeve? Was it a star or like a shield like those gentlemen are wearing? A. It wasn't a shield.

271. Q. Do you know what it was? A. No, sir, I don't.

272. Q. Can you describe it at all? A. I didn't see a star, just the uniform with them two stripes on it.

273. Q. How do you know you didn't see a shield? If you didn't see a shield I'd like to know what it is, its description? A. I didn't see anything on his arms whatsoever. No shield or no star. I did notice the two stripes.

274. Q. You know there were two stripes but whether he was wearing a shield or star or what type of insignia he had you don't know? A. I don't know sir.

275. Q. Do you know what kind of insignia he was wearing on a cap, or did you see a cap? A. He had it in his hands.

276. Q. Can you describe the insignia he had on it, was it a shield that was on it? A. I didn't see the shield or anything on his hat.

Cdr. Schlegel: Let me make a statement for the record at this time on behalf of the Navy Department. I have no personal knowledge of who this individual was who called upon Mr. Upton. The Secretary of the Navy has directed that witnesses shall not be subpoenaed for the Navy Court of Inquiry. The Secretary of the Navy has indicated in this particular case his well established policy of conforming with the regular rules of Civilian Admiralty

practice of not attempting to contact the witnesses of the other side unless he has the permission of counsel for parties concerned. I have no explanation as to who contacted Mr. Upton. If he was anybody in the Navy I presume that he was someone that has started a separate investigation from some involved command without receiving proper clearance from the people who were actually doing the work. Since you have given no statement I think that there is no harm done and I shall take official action to see that anybody who may have been involved in the Navy in this matter will be properly advised so that the incident is not repeated, assuming that there was a Navy man in it which apparently I can't determine at this time.

Mr. Brush: May I simply remark that I do not know who this individual was. I simply thought that since Mr. Upton was under subpoena to appear here and testify since Saturday, that the Board should be informed of that. I do know, however, with respect to your statement as to the general policy of the Navy Department, that the Legal Officer for the Third Naval District, accompanied by two other officers appeared aboard the Washington on Saturday, immediately upon the arrival of the vessel and asked to interview the officers and crew of the Washington. I thought that was quite irregular and was surprised. I informed them that they would not be permitted to interview so that I have no general knowledge of the policy of the Navy. I should hope it would be the policy of the Navy not to permit such action.

Cdr. Schlegel: Was this the Legal Officer of the Third Naval District you say?

Mr. Brush: He described himself as the Legal Officer of the Third Naval District. I don't remember his name.

Lt. Wilkin: That is the Legal Officer of the Navy yard, but he is attached to the Fourth Naval District here.

Mr. Brush: Yes, the Fourth Naval District.

Cdr. Schlegel: I'll take appropriate action to see that everybody in the Fourth Naval District is duly instructed so that the incident won't be repeated, an' I can only reassert the policy and the good intentions of the Navy Department concerning the problem. It is simply one of indoctrination I gather and certainly the Fourth Naval District people will be indoctrinated on that score so that the incident isn't repeated during their regime.

By Cdr. Schlegel:

277. Q. Mr. Upton, will you tell me the direction the wind was blowing as you were standing out on the forecastle head of the Washington? A. I think it was blowing straight ahead.

278. Q. How was the temperature that night? A. That I don't know.

279. Q. Was it warm or was it cool? A. It was pretty cool.

280. Q. Now, as you stood at the bell, how far were you from the foremost part of the ship, the bow? A. I'd say 15, 16 feet.

281. Q. And were you standing on the deck as you stood by the bell? A. What do you mean, sir.

282. Q. You didn't have a box there to raise you up from the deck; your feet were on the deck? A. Yes, sir.

283. Q. As you stood at the bell looking forward over the bow— A. I was up forward looking towards—

284. Q. No, I'm talking about at the time you were standing at the bell. At that time can you tell me how far ahead you would have to look over the ship as she was loaded at the time in order to see the water. Do you see what I mean. You're standing here. You have the bow here, and somewhere there is a blank area; you're looking down over the bow and there is some water. You can't see immediately under the bow I presume. Can you tell me how far out over the water you have to look before you can see? A. Quite a long ways.

285. Q. Quite a long ways? A. Yes, sir.

286. Q. This ship you say that you saw at about 2 a.m. about 3 points off the starboard bow, you gave one bell. This was the same ship are you certain that you again reported a few minutes later? A. I reported the same light twice.

287. Q. That you reported the first about 2 a.m.? A. It was something a few minutes before.

288. Q. A little before 2 you reported it the first time and that is when she was off your starboard bow? A. Yes, sir.

289. Q. And then a few minutes later you reported the second light or you reported the same light a second time? A. Yes, sir.

290. Q. Do you remember about how many minutes there was in that interval? A. I'd say around 10 minutes.

291. Q. And then from the time that you reported it the second time about how long was it until you began to ring the bells as fast as you could as she was coming in on you? A. Well, it was when I could just see the bow of their ship.

292. Q. And how far off was that bow about that time your best guess? A. That I don't know myself, just how far.

293. Q. Do you think it was as much as a mile or a half mile? A. No, it was no mile.

294. Q. Was it a half mile; do you think that far? A. No, sir.

295. Q. Could you actually see the bow of the ship; the outline of it, the silhouette? A. When I was standing looking I could see their bow and at the time—and the time I rung the bells I don't know anything else from then on.

296. Q. During this time now from a little bit before 2 o'clock in the morning until you blacked out you had been watching this one light coming closer to you, is that right? A. I was watching that one light and observing all that I could see in sight.

297. Q. But you had that one particular light under—you knew where he was at all times? A. How's that again?

298. Q. You knew what this one light was doing; you were keeping generally familiar with the whole area and with this one light? A. I was watching the lights I had reported.

299. Q. On any of these other lights that were around did you have any occasion to report any of them a second time? A. No, sir. The reason I reported that one on the starboard it was approaching us very fast.

300. Q. He seemed to be closer to you all the time? A. Yes, sir.

301. Q. And after you reported it the second time about how long was it until the time of collision or until he got so close that you blacked out? A. How's that?

302. Q. You first reported the light about a few minutes before 2 and then about 10 minutes later you said you reported the same light a second time? A. Yes, sir.

303. Q. And then a little bit later on you blacked out when he came so close and you had the collision. Now, how long was it from the time you reported this second light or from the time you reported this light the second time until you blacked out, just a guess? A. You mean after I rung the bell?

304. Q. That's right, you rang the bell a second time, did you still see this light over here? A. Yes.

305. Q. And from that time how long was it until you lost consciousness? A. I don't know sir.

306. Q. Was it a half hour? A. No, sir.

307. Q. Was it 10 minutes? A. I don't think quite 10 minutes.

308. Q. Was it more than 5 minutes? A. I'd say around 7, maybe 8 minutes.

309. Q. 7 or 8 minutes from the time you rang the bell the second time until you blacked out? A. Yes, sir.

310. Q. Now, how long were you at the bell this third time ringing the bell very violently to try to tell him that he almost on us? A. I rang the bell about 4 or 5 times and I went out. I don't know what happened.

311. Q. It was just a matter of seconds that you were ringing the bell then before you blacked out? A. Yes, sir.

312. Q. During all this time from a few minutes before 2 in the morning when you reported the light the first time until you blacked out, had you tried to contact the bridge or anybody else aboard the ship by voice or any other means besides ringing the bell? A. No, sir.

313. Q. Had there been anybody else on the forecastle head with you at any time from 1:30 on that morning until you blacked out? A. No, sir.

314. Q. Did you have a pair of binoculars while you were on the forecastle head standing watch? A. No, sir.

315. Q. Is it customary for you to stand watch aboard the vessel without binoculars and simply using your naked eye? A. It's only that, I have ever used.

316. Q. Do you wear glasses? A. No, sir.

317. Q. Can you read the top three cards back there on that board? (Indicating a placard board in the rear of the hearing room.) A. (Reading) "Claim, Record, Certified."

(The cards read, Claims; Recording; Certification.)

318. Q. That is good enough; that is fine. Now, as this one light was coming closer and closer to you; the one that you reported first a few minutes before two a. m. and then about ten minutes later, and then about six or seven minutes later on by ringing the bells four or five times when he was right on you, what had these other ships been doing that you also noticed in the area? A. The other ships was off a distance.

319. Q. How far off were they? A. Well, that is something I can't guess, these ocean miles.

320. Q. Had you come closer and closer to them during the time that this other ship was coming in on you, can you tell that? A. After that ship was coming in close I kept my eye on that one ship at the present time but I was viewing the other ships in the stern of the ship which was on the starboard bow. (Witness draws sketch.) Our ship was here, a ship here and these few lights also starboard.

Recorder: He says his ship was so, this ship was coming in on him and just a few lights on the—I'll call it the stern of that other Navy ship whatever it was at the present time; a few lights here but these weren't coming any closer.

By Commander Schlegel:

321. Q. In other words you had some lights astern of the Navy ship? A. Yes, sir, just a few.

Commander Schlegel: Will it be all right if I draw this outline for him?

The Board: Yes.

(Commander Schlegel places ship models on sketching paper and witness places them in their respective positions. Commander Schlegel then draws around models.)

By Commander Schlegel:

322. Q. This is your ship labeled the Washington, and this the Navy ship labeled "Navy". Now, about how far would you say it was, at the time you made this observation, between the closest points of the two ships, the Washington and the Navy? A. You mean before anything happened?

323. Q. Yes. At the time that you saw the ships like this how far do you think they were apart? A. You mean—

324. Q. When you saw the lights over on the stern there—what I want you to do—suppose we approach it this way. You said when the ships were in this position that you saw some other lights over off the stern of the Navy ship. Now, can you take this pencil and show me approximately where you saw those lights off the stern of the Navy ship? A. (Witness indicates.)

325. Q. What kind of lights did you see over there? A. You could only see white lights.

326. Q. How many white lights did you see? A. Well, I don't recollect just how many.

327. Q. Did you see more than one? A. Yes, sir.

328. Q. Did you see two? A. More than two.

329. Q. Did you see three? A. I saw around four or five lights.

330. Q. Four or five lights. Will you draw here just a little round circle showing where you saw each one of those lights as best you can remember? A. To my best of knowledge I'd say— (Witness indicates as requested.) It looked like fishing boats to me.

331. Q. Now, at the time everything looked like this to you, about how far would you estimate it was between the Washington and the Navy ship? A. You mean before the accident happened?

332. Q. At the time you saw the Navy ship here you were standing— A. Before I could see it?

333. Q. That's right, as you were standing here and as you were standing up in the forecastle head it looked to you like the Navy ship was over here and you could see 1, 2, 3, 4, 5, lights off her stern, and now at that time how much distance do you think there was between you and the Navy ship? A. I'd say there was about 50, 60 feet.

334. Q. 50 or 60 feet at that time? A. Yes, sir.

335. Q. And how much distance do you think there was between you and these lights? A. Well, I'd say a mile.

336. Q. A mile? A. Yes.

337. Q. And about how long was it before you blacked out that you made this observation? A. From here to there?

338. Q. Yes. A. I run back to the bell.

339. Q. That was just a matter of seconds? A. Yes.

340. Q. Is that the way it looked? A. Yes.

341. Q. And at this time was the last clear view you have of the Navy ship coming in on you? A. Yes, sir.

Commander Schlegel: I'd like to have this introduced into evidence.

342. Q. Will you sign this please? A. Yes. (Witness complies.)

(Sketch of positions of vessels by James Arnold Upton was submitted to the board and to the parties in interest and by the recorder offered in evidence.)

(There being no objection, it was so received, and marked Exhibit No. 10.)

By Commander Schlegel:

343. Q. Mr. Upton, at the time you observed the Navy ship and these lights from the Washington's bow when the Navy ship was 50 or 60 feet away from you as you

have indicated on this sketch, can you tell—on the exhibit, can you tell me if you saw any lights dead ahead or off to port? A. You mean—

344. Q. When the Navy ship was 50 or 60 feet away from you as you indicated here on this exhibit, do you remember whether you saw any lights or any ships dead ahead or over to port? A. That I don't know sir. I was all excited.

345. Q. Do you recall when before this time you last remembered seeing any ships dead ahead or off to port if you do remember seeing any? A. Before anything happened I seen that cross the bow.

346. Q. You say you saw that cross the bow, what do you mean? A. The light cross.

347. Q. You saw one light cross your bow and about how long was it before this collision happened? A. I don't know sir.

348. Q. Was it a long time, was it as much as a half hour? A. That was the one I explained to them. It was around 1:15, I'd say. I don't know, just guessing about what time.

349. Q. And you don't recall any other lights passing you or over on your port side going from starboard to port, passing you dead ahead or over on your port side after about one o'clock? A. I don't know sir.

350. Q. I think you said that about 1:15 you had this vessel that passed across your bow coming from your starboard crossing your bow toward port? A. Coming from port to starboard.

351. Q. Port to starboard about 1:15. Did you at any time from the time that vessel passed ahead of you make any report of vessels dead ahead or a vessel dead ahead? A. When I reported that light I rung two bells for the port bow.

352. Q. After that did you ever make any report of a vessel dead ahead or vessels dead ahead before the collision? A. No.

353. Q. How would you make a report of a vessel dead ahead? A. Three bells.

354. Q. And you never gave a three bell signal at any time during the hour before the collision? A. No, sir.

355. Q. How long have you been aboard the Washington? A. November the 8th, 1952.

356. Q. You joined her in the Gulf on this present voyage? A. Yes, sir.

357. Q. Did you receive any instructions at all after you boarded the Washington as to the manner in which you were to conduct your lookout duties on the forecastle from anybody aboard the Washington? A. No. When I first come aboard the mate on watch always asked the ordinarys, the a.b.'s and quartermasters names of the watches.

358. Q. And your job as you understood it if I understand you correctly, was to be up on that forecastle and ring one, two, or three bells indicating whatever you might see ahead of you? A. Yes, sir.

359. Q. Did you have any orders or instructions about making sure that anybody aboard that ship heard those bells? A. I was to ring it loud enough so the mate on watch can hear it.

360. Q. And did you have any way of knowing whether or not he did hear the bells when you rang them? A. No, sir.

361. Q. As you were standing on the forecastle by the bell ringing it during these last few seconds or whatever it may have been before the collision, do you recall whether your vessel made any noticeable engine changes? A. No, sir, I didn't.

362. Q. Do you know what speed or how her engines were going before the collision? A. No.

363. Q. All you know was that she was going forward? A. Yes, sir.

364. Q. When you are up there if the engines are placed in reverse; from ahead to full astern, could you tell by

vibration or in any other manner whether or not there was an engine change being made? A. That I don't know sir. At this time I was all excited.

365. Q. But usually, assuming that you are not excited, just as you stand up there normally, when they make an engine change can you usually feel a vibration or something that tips you off that there is a change of engines being made? A. Yes, sir, I could.

366. Q. And you don't recall anything of that nature happening that night before the collision or before you blacked out? A. I don't recall sir.

367. Q. How fast do you think the ship that you were in collision with was actually travelling as she was coming in? A. I don't know.

368. Q. Was it fast or slow? A. Coming pretty fast is all I can say.

369. Q. And in view of the fact that she was coming in pretty fast and appeared to be coming closer to you, was there anything that you could have done between ringing of the second bell, telling them that you still had the light, until you rang the bell again rapidly 4 or 5 times just before you blacked out? A. Not that I know of sir, just the bells, that is all.

370. Q. Did you try shouting to the bridge? A. No, sir.

371. Q. If you had shouted do you think you could have been heard? A. That I don't know.

372. Q. Are you able normally to be heard if you shout from where you were standing by these people on the bridge? A. I don't know.

373. Q. How far is it from where you were standing on the forecastle head, as you stood this watch, to the bridge where the mate would be, in that vicinity? A. That I don't know just how far it is.

374. Q. Did the thought of shouting ever occur to you as you watched the ship closing with you? A. Yes, sir.

Examination of James Arnold Upton:

375. Q. Why didn't you shout? A. After I rung the second bell I thought about it but I couldn't get it out.

The Board: It's 1145 now, we'll adjourn now and reconvene at a quarter of one.

The Board adjourned at 1145, 18 November, 1952.

The Board reconvened at 1300.

All members and parties in interest who were present when the Board recessed for lunch are present.

The witness was warned that his oath is still binding.

By Cdr. Schlegel:

376. Q. Mr. Upton, you said earlier that you heard whistle signals from the Washington before you blacked out. Can you tell me about how long it was between hearing the first blast made of these whistle signals and the time that you blacked out? A. What do you mean, sir.

377. Q. How long was it between the time you first heard them making a whistle signal on the Washington and the time that you blacked out? A. I'd say it was around after 1: just about a minute or so after I rung the second bell for the same light.

378. Q. And how long was it from the time that you heard the last whistle signal made by the Washington until you blacked out? A. I don't know.

379. Q. Was it very long, was it 5 minutes or 5 seconds? A. It wasn't that long.

380. Q. Was it as much as 2 minutes, 3 minutes, 1 minute, what ever your best estimate is? A. Around 5 or 6 minutes.

381. Q. How much? A. Around 5 or 6 minutes.

382. Q. Around 5 or 6 minutes? A. Yes, sir.

383. Q. Do I understand you correctly to be saying that you made your second signal with the bell— A. Yes, sir.

384. Q. —and then about a minute or maybe two minutes after that your ship made some whistle signals— A. Yes, sir.

385. Q. —and then it was about 5 or 6 minutes from the time those whistle signals stopped until you blacked out? A. I didn't have no watch or anything up there.

386. Q. That is your best estimate of the situation? A. it could have been that long; it may not have been that long, I don't know.

387. Q. But that is your best guess as to the relative periods of time? A. I wouldn't say exactly but it may have been 4, 5, 6 minutes, I don't know.

388. Q. For how long a period of time do you think the whistle signals were being made? I mean from the first blast until the last blast by the Washington? About how long a time do you think is involved in that? A. I heard the short blast.

389. Q. You heard what? I didn't get the answer? A. The short blast. I don't know the period of time.

390. Q. Were the blasts separated? I mean did they all come in fairly regular intervals or did you hear one set of blasts and then a pause and then another set of blasts? A. I heard two short blasts right together.

391. Q. Two short blasts right together? A. Yes.

392. Q. And then what was the next thing that you heard? A. I don't know if a long one or a short one. I don't remember.

393. Q. And how long after the two short blasts was it that you heard this next whistle, whatever it may have been? A. Just a few moments.

394. Q. You say a few moments, do you mean a few seconds or a few minutes or what do you mean? A. I'd say around two or three minutes.

395. Q. So that first you heard two short blasts and then in something from two to three minutes you heard some other whistle signal that you heard this two or three minutes later. Can you tell me whether there was more than one blast in that whistle? A. Yes, there was more than one blast.

396. Q. Was there more than two? A. I don't remember, sir.

397. Q. There was at least two, you are sure of that? A. Yes, sir.

398. Q. And these were long blasts as contrasted with the first signal which you heard and described as short? A. Yes, sir.

399. Q. You said that the Washington changed course. I believe you estimated about 10 degrees to the right temporarily and later came back on her regular course? A. Yes, sir.

400. Q. Can you estimate about how long you think she was off course? A. Not very long.

401. Q. A matter of how many minutes, a guess? A. Oh; I don't know. I'm not very good at that.

402. Q. Was it 10 minutes, 20 minutes, 35 minutes? A. I'm afraid to say. I don't know.

403. Q. Did you have any way of telling to your own satisfaction when she changed course and when she came back on course. That is, were you looking at any lights or anything which gave you in your own mind an accurate object on which to determine any course change? A. I don't remember sir.

404. Q. What was the last thing you remember before blacking out? A. Ringing the bells.

405. Q. When was the last time before the collision that you made any bell signals indicating ships on your port

side if you had any? A. Well, I'd say something around 1:15.

406. Q. That is the last time you recall seeing any ships on your port side or ringing a bell for ships on your port side? A. Yes, sir.

407. Q. And for how long after making that bell signal indicating ships on your port side at 1:15 do you remember seeing those ships which you reported by bell off to port? A. It went on across the bow and I never seen that come no more.

408. Q. Did you see any other ships on your port side after that one? A. Yes. I saw two or three lights over. I didn't see the ships, just the lights.

409. Q. When was it that you saw these 2 or 3 lights over on the port side? A. The same time I reported that one that was coming across the bow.

410. Q. The one coming across the bow. You mean the one which you were in collision with? A. When I reported one light if they all run together that means all of them. That is the way I report.

411. Q. So that at the time you made that report at 1:15 you had one light that was crossing your bow from port side to starboard and in addition you had some two or three other lights off to port? A. In the same instance when I reported that one light.

412. Q. Right. Now, what happened to those other two or three lights that you reported, as you can best recall? A. Well, they seemed like to me they was in the same spot all the time.

413. Q. You mean their bearing was not changing? A. No.

414. Q. You or yourself on them as you proceeded on? A. Yes, sir.

415. Q. And when was the last time before the collision that you recall seeing these several lights off to port? A.

Them lights as we were going ahead they was coming more like we were passing them, coming further down; I'd say around 3 points and then about 3½ points, the last I saw of them.

416. Q. You say they were passing you. You mean they were passing you from your port to starboard or from starboard to port, or how? A. I couldn't say if they were passing us or not.

417. Q. Your last recollection of them then is still being on your port side? A. On the port side.

418. Q. And how long before the collision or before you blacked out was it that you recall last seeing these vessels when they were on your port side? A. They were still on our port side and some on our starboard side also.

419. Q. At what time? A. When I reported.

420. Q. When you reported, and at what time did you make this report? A. The ones I saw on the starboard bow they seemed like to me they was just sitting there, anchored. I don't know, I couldn't swear, nothing like that.

421. Q. All you know is that they seemed to be in the same position to you all the time, their lights didn't change? A. But this one light coming from the starboard side.

422. Q. The one light that you followed and that came in collision with you kept changing? A. Yes, sir.

423. Q. Coming closer all the time? A. Coming closer.

424. Q. These other lights all stayed in the same general position to you? A. Well, I wouldn't say that but they seemed like moving certainly very little.

425. Q. I see. Now, these lights that were moving just very little were part of them on the port side? A. Yes, sir.

426. Q. How many of them were on the port side? A. Two or three, three or four, something—I don't know exactly how many.

427. Q. And how long before the collision was it that you last remember seeing these 2 or 3 or 3 or 4 lights over on your port side somewheres? A. Around 1:15.

428. Q. You don't recall seeing these lights on your port any time after 1:15? A. Yes, I saw them until about 1:30.

429. Q. You saw what, still 2, 3, or 4 of them around 1:30? A. It seems the lights went out, I don't know what happened.

430. Q. You saw them about 1:30? A. Yes.

431. Q. Do you recall seeing them any time after 1:30? A. No, sir.

432. Q. At 1:30 did there seem to be more of a concentration of lights on your starboard or your port side? A. What do you mean sir.

433. Q. In other words, about 1:30 when you didn't notice these lights any more over on your port side; just before you lost sight of the lights on the port, did it seem while standing up on the forecastlehead that there was more lights over on the starboard side than there were over where you saw these two, three, or four lights on the port side? A. Yes, sir, there were.

434. Q. About how many more, can you estimate? A. No, sir.

435. Q. You said a little while ago after you went on the poop deck you didn't know exactly when— A. What would you call the poop deck?

436. Q. Wherever you went after the collision. Where did you go after the collision. What I'm getting at is that you said a while ago that after the collision you got up and were stirring about and you saw the ship off in the distance which you presumed which was the Navy ship you had been in collision with, is that right? A. Yes, sir.

437. Q. Now, at the time you saw this Navy ship off in the distance, did you notice what lights she had on? A. No, sir. I did not.

Examination of James Arnold Upton

438. Q. Did you notice whether she had a white light? A. I was still addled. I don't know what I saw.

The Board: Does anyone else have any further questions of this witness?

Mr. Brush: No.

Cdr Schlegel: No.

By the Board:

439. Q. Is there anything further you wish to state which has not been brought out in this Board so far that you think should be a matter of evidence? A. No.

(Neither side, the parties in interest nor the Board desired to further examine the witness.)

(The witness was duly warned, dismissed, and he withdrew.)